

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,

*Plaintiff,*

v.

MASIMO CORPORATION and  
SOUND UNITED, LLC,

*Defendants.*

MASIMO CORPORATION and CERCACOR  
LABORATORIES, INC.,

*Counter-Claimants,*

v.

APPLE INC.

*Counter-Defendant.*

C.A. No. 22-1377-MN-JLH

C.A. No. 22-1378-MN-JLH

**JURY TRIAL DEMANDED**

**PLAINTIFF APPLE INC.'S OBJECTIONS AND RESPONSES TO DEFENDANTS'  
SECOND SET OF REQUESTS FOR PRODUCTION (NOS. 50-165)**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, and the Local Rules of the United States District Court for the District of Delaware, Plaintiff Apple Inc. ("Apple") hereby provides the following Objections and Responses to Defendants Masimo Corporation's ("Masimo"), Sound United, LLC's ("Sound United"), and Counterclaimant Cercacor Laboratories, Inc.'s ("Cercacor") (collectively, "Defendants") Second Set of Requests for Production (Nos. 50-165). Apple's discovery and investigation in connection with this action are continuing. As a result, Apple's objections and responses are limited to information obtained and reviewed to date and are given without prejudice to Apple's right to supplement or amend these objections and responses to the extent allowed by the Federal Rules of Civil Procedure, the Local

Rules of this Court, and any applicable scheduling orders as discovery and Apple's investigation in the action proceeds.

### **GENERAL OBJECTIONS**

Apple makes the following General Objections to Defendants' Second Set of Requests For Production, which apply to each request regardless of whether the General Objections are specifically incorporated into the specific objections and responses below.

1. Apple objects to each request, definition, and instruction to the extent it calls for information that is protected from discovery by the attorney-client privilege, the work product doctrine, the joint defense/common interest privilege, or that is otherwise protected from disclosure under the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Rules of this Court, any applicable Orders of this Court, and/or relevant statutory or case law. Inadvertent disclosure of any such information shall not be deemed a waiver of any privilege or immunity.

2. Apple objects to each request, definition, and instruction to the extent it seeks to impose any requirements or obligations in addition to or broader than those set forth in the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Rules of this Court, any applicable orders of this Court, any stipulation or agreement between the parties, and/or relevant statutory or case law.

3. Apple objects to each request, definition, and instruction to the extent it seeks information that: (a) is not proportional to the needs of the case; (b) is not relevant to any party's claims or defenses; (c) is unreasonably cumulative, repetitive, or duplicative; (d) has already been provided to Defendants or is obtainable from some other source that is more convenient, less

burdensome, or less expensive; (e) creates a burden or expense outweighing any likely benefit; (f) is not restricted to any particular time frame; and/or (g) is overbroad.

4. Apple objects to each request, definition, and instruction to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available.

5. Apple objects to each request to the extent it calls for confidential and/or proprietary information of any individual or entity other than Apple, except as allowed by any court orders, including any applicable orders of this Court, and/or relevant statutory or case law governing the disclosure of such information.

6. Apple objects to each request, definition, and instruction to the extent it conflicts with or purport to require the production of information prohibited from disclosure by protective orders in other litigations or improperly seek to cross-use information from other litigations.

7. Apple objects to each request to the extent it calls for legal conclusions, presents questions of pure law, or calls for expert opinion. No response or agreement to produce discovery shall be construed as acceptance of any contention or legal claim included or implied in the request.

8. Apple objects to each request to the extent it seeks mental impressions, legal conclusions, legal opinions, or legal theories of Apple.

9. Apple objects to each request as premature to the extent it calls for discovery, including discovery concerning initial disclosures, the parties' contentions, claim construction, or expert testimony, in advance of the dates set by the Court for disclosure of such information in the relevant scheduling orders.



10. Apple objects to each definition and instruction to the extent it purports to alter the plain meaning and/or scope of any specific request on the ground that such alteration renders the request vague, ambiguous, overbroad, or uncertain.

11. Apple objects to each request using the term “Apple Watch,” as well as Defendants’ definition of that term, as overbroad, vague, ambiguous, unduly burdensome, and calling for information that is neither relevant to any party’s claim or defense, nor proportional to the needs of the case. For example, Defendants’ definition of “Apple Watch” includes versions of Apple Watch that are unrelated to the parties’ claims and defenses in this case.

12. Apple objects to each request using the term “Apple Asserted Patents,” as well as Defendants’ definition of that term, as overbroad, vague, ambiguous, irrelevant, unduly burdensome, and calling for information that is neither relevant to any party’s claim or defense, nor proportional to the needs of the case. In particular, Apple objects to defining, in this case, “Apple Asserted Patents” to include any patent asserted by Apple in Case No. 22-1378, including but not limited to United States Patent Nos. 10,076,257 (the “‘257 patent”), 10,627,783 (the “‘783 patent”), 10,942,491 (the “‘491 patent”), 10,987,054 (the “‘054 patent”), 11,106,352 (the “‘352 patent”), and 11,474,483 (the “‘483 patent”). Apple interprets “Apple Asserted Patents” in these responses as one or more of the patents asserted by Apple in Case No. 22-1377, including United States Patent Nos. D883,279 (the “‘D279 Patent”), D947,842 (the “‘D842 Patent”), D962,936 (the “‘D936 Patent”), and D735,131 (the “‘D131 Patent”).

13. Apple objects to each request using the term “Apple Fraudulently Obtained Patents” as misleadingly adopting Defendants’ baseless contention that U.S. Patent Nos. D883,279 (the “‘D279 Patent”), D947,842 (the “‘D842 Patent”), D962,936 (the “‘D936 Patent”), 10,627,783 (the “‘783 Patent”), 10,942,491 (the “‘491 Patent”), 11,474,483 (the “‘483 Patent”) were

fraudulently procured. Apple will construe the term as those patents subject to Defendants' *Walker Process* claims ("Walker Process Patents") and use that terminology.

14. Apple objects to each request using the term "concerning," "relating to," "related to," "relate to," or "including," or similar phrases as overbroad, vague, and ambiguous. Furthermore, Apple objects to each use of these terms to the extent that it requires subjective judgment and speculation on the part of Apple.

15. Apple objects to each request using the terms "document," "communication," and "thing," as well as Defendants' definition of those terms, to the extent it seeks materials beyond what is contemplated by Federal Rule of Civil Procedure 34, applicable Local Rules of this Court, or agreements entered into by the parties. Apple objects to each request to the extent that it seeks to require Apple to conduct a general search of email or other ESI to identify responsive documents. Apple does not intend to search and produce emails or ESI based on any such search, absent a showing of good cause by Defendants. Defendants have not made such a showing with respect to any request. Apple will not produce tangible things unless specifically designated in the request.

16. Apple objects to each request using the term "Apple," "You" and "Your," as well as Defendants' definition of those terms, to the extent that those definitions include any persons or entities other than Apple Inc.

17. Apple objects to each request using the term "Masimo," as well as Defendants' definition of that term, to the extent that those definitions include any persons or entities other than Masimo Corp.

18. Apple objects to each request using the term “Sound United,” as well as Defendants’ definition of that term, to the extent that those definitions include any persons or entities other than Sound United, LLC.

19. Apple objects to each request using the term “Cercacor” as well as Defendants’ definition of that term, to the extent that those definitions include any persons or entities other than Cercacor Laboratories, Inc.

20. Apple objects to each request using the term “prior art,” as well as Defendants’ definition of that term, as overbroad, vague, ambiguous, unduly burdensome, and calling for information that is neither relevant to any party’s claim or defense, nor proportional to the needs of the case.

21. Apple objects to each request using the term “prosecute,” as well as Defendants’ definition of that term, as overbroad, vague, ambiguous, unduly burdensome, and calling for information that is neither relevant to any party’s claim or defense, nor proportional to the needs of the case.

22. Apple objects to each request, definition, and/or instruction as overbroad, unduly burdensome, and calling for information that is neither relevant to any party’s claim or defense nor proportional to the needs of the case to the extent the request, definition, and/or instruction seeks identification of “all” facts, documents, persons, evidence, or bases, or that purports to require Apple to marshal “all” evidence concerning any issue in dispute. Consistent with its obligations under the Federal Rules of Civil Procedure, Apple will make a reasonable response and/or production at the appropriate stage of discovery proportional to the needs of the case. Where Apple commits to producing categories of documents that “are located after a reasonably diligent search” it intends to limit its search to the parties’ agreed upon scope of ESI custodians and search

terms, as well as any applicable Court orders. Unless otherwise stated herein, Apple's reasonably diligent search will include documents created on or between December 12, 2020 and May 31, 2023.

23. Apple objects to each request using the term "person," as well as Defendants' definition of that term, as overbroad, vague, and ambiguous. Furthermore, Apple objects to each use of this term to the extent that it requires subjective judgment and speculation on the part of Apple. Apple interprets Defendants' definition of "Person" as any natural person or legal entity.

24. Apple's discovery and investigation in connection with this case are continuing. As a result, Apple's objections and responses are limited to information obtained and reviewed to date and are given without prejudice to Apple's right to amend or supplement these objections and responses as discovery and Apple's investigation in this case proceeds.

25. Apple objects to each request, definition, and instruction to the extent it requires Apple to respond to discovery that is duplicative of discovery provided in *Masimo Corporation et al. v. Apple Inc.*, No. 8:20-cv-00048 and *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, Inv. No. 337-TA-1276 and subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

26. To the extent each request relates to Counter-Claimants' Counterclaims in Case No. 22-1378, Apple reserves the right to revisit its responses following the Court's decision on Apple's motion to dismiss Counterclaims I-VI. D.I. 39 (No. 22-1378).

to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will produce responsive, relevant, and non-privileged documents in Apple's possession, custody, and control, that contain competitive assessments and competitive analysis of Defendants' W1 Watch, Defendants' Freedom Watch, and any other watch product sold in the United States, to the extent such documents exist, are located after a reasonably diligent search, and are not duplicative of discovery subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

**REQUEST FOR PRODUCTION NO. 56:**

All documents, communications, and things referring or relating to competitive conditions for any market in which You contend the Apple Watch competes, including (a) market shares of competing products; (b) trends in pricing; (c) the maturity or lack of maturity of the industries for such products; (d) supply and/or demand; (e) price elasticity; (f) cross-elasticity; (g) the presence or absence of product substitutes; (h) product fungibility or interchangeability; and (i) industry concentration or consolidation.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 56:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request as containing a series of sub-requests that are overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests "[a]ll documents, communications, and things" without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to this request because the terms and phrases "competing products," "trends in pricing," "the maturity or lack of maturity of the industries," "price elasticity," "cross-elasticity," "the presence or absence of product substitutes," "product

fungibility or interchangeability,” and “industry concentration or consolidation” are vague, ambiguous, overbroad, and does not describe with reasonable particularity the type of documents sought. Apple further objects to this request as premature to the extent it calls for legal conclusions and/or expert discovery in advance of dates for disclosing such information set by the Court. Apple will disclose expert opinions in accordance with the applicable scheduling orders of the Court. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple’s business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple further objects to this request to the extent that it seeks discovery duplicative of discovery previously produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) and *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, No. 337-TA-1276 that is subject to the parties’ cross-use agreement and the Court’s oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will produce responsive, relevant, and non-privileged documents in Apple’s possession, custody, and control, that constitute market analyses for the Apple Watch, including documents that discuss any share estimates, competitive products, pricing analyses or comparisons

among products (including price elasticity), and other supply and demand factors facing the Apple Watch, to the extent such documents exist, are located after a reasonably diligent search, and are not duplicative of discovery subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

**REQUEST FOR PRODUCTION NO. 57:**

All documents, communications, and things referring or relating to the buying patterns or behavior of consumers of Apple Watch inside the U.S. as compared to the buying patterns or behavior of consumers of Apple Watch outside the U.S.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 57:**

Apple incorporates by reference its General Objections. Apple further objects to this request as not relevant to the claims or defenses of any party because it seeks discovery concerning markets outside of the United States. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests "[a]ll documents, communications, and things" without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to this request because the terms and phrases "buying patterns" and "behavior of consumers" are vague, ambiguous, and overbroad does not describe with reasonable particularity the type of documents sought. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple further objects to this request to the extent that it seeks discovery

outside of the United States. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case on the same grounds. Apple further objects to this request because the phrase “differences between the Apple App Store inside the U.S. and the Apple App Store outside the U.S.” is vague, ambiguous, overbroad, and does not describe with reasonable particularity the type of documents sought. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent that it seeks discovery duplicative of discovery previously produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) and/or *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, No. 337-TA-1276 that is subject to the parties’ cross-use agreement and the Court’s oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 62:**

All documents, communications, and things referring or relating to any definition, description, or analysis of the market(s) for app stores or app distribution, including marketing studies, analyses, or market reports (internal to Apple or from a third party) that refer to app stores or app distribution.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 62:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request as not relevant to the claims or defenses of any party as it seeks irrelevant



discovery regarding the Apple App Store. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests “[a]ll documents, communications, and things” without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to this request because the phrase “marketing studies, analyses, or market reports (internal to Apple or from a third party) that refer to app stores or app distribution” is vague, ambiguous, overbroad, and does not describe with reasonable particularity the type of documents sought. Apple further objects to this request as improper to the extent it calls upon Apple to identify a relevant antitrust market applicable to the Apple App Store on the grounds that it calls for legal conclusions and/or is premature to the extent it seeks expert discovery in advance of dates for disclosing such information set by the Court. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple’s business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple further objects to this request to the extent that it seeks discovery duplicative of discovery previously produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) and/or *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, No. 337-TA-1276 that is subject to the parties’ cross-use agreement and the Court’s oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 63:**

All documents, communications, and things referring or relating to Apple's control of iOS app distribution.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 63:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request as not relevant to the claims or defenses of any party on the grounds that it seeks irrelevant discovery into Apple's iOS application distribution. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests "[a]ll documents, communications, and things" without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to this request because the terms and phrases "referring or relating to Apple's control of iOS app distribution" are vague, ambiguous, overbroad, and do not describe with reasonable particularity the type of documents sought. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple further objects to this request to the extent that it seeks discovery duplicative of discovery previously produced in the cases

captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) and/or *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, No. 337-TA-1276 that is subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 64:**

All documents, communications, and things referring or relating to the ability of Apple users to switch to products or services from other companies, including but not limited to the ease or difficulty with which consumers can switch between Android and Apple devices.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 64:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request as not relevant to the claims or defenses of any party to the extent it seeks irrelevant discovery concerning Apple products other than the Apple Watch. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests "[a]ll documents, communications, and things" without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to this request because the phrase "referring or relating to . . . the ease or difficulty with which consumers can switch between Android and Apple devices" is vague, ambiguous, overbroad, and does not describe with reasonable particularity the type of documents sought. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents,

discovery subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

**REQUEST FOR PRODUCTION NO. 71:**

All documents, communications, and things referring or relating to the impact Masimo's products may have on the price, quality, availability, or market-wide output of products in any market in which Apple Watch competes.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 71:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request to the extent it seeks information concerning any market outside of the United States on the grounds that it is not relevant to the claims or defenses of any party. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests "[a]ll documents, communications, and things" without limitation, including with respect to a temporal or geographic scope of the request. Apple further objects to this request as premature to the extent it calls for legal conclusions and/or expert discovery in advance of dates for disclosing such information set by the Court. Apple will disclose expert opinions in accordance with the applicable scheduling orders of the Court. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available.

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will produce responsive, relevant, and non-privileged documents in its possession, custody, and control, which discuss or analyze the competitive impact (if any) Defendants' products may have on the Apple Watch or other products competing with the Apple Watch in the United States, including impact on product pricing, quality, and supply, to the extent such document exists, are located after a reasonably diligent search, and are not duplicative of discovery subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

**REQUEST FOR PRODUCTION NO. 72:**

For the period from January 1, 2018 to present, documents sufficient to show for each of your Apple Watches on a transactional basis (or the most granular level at which such information is stored):

- a. The net price charged;
- b. Gross revenue and net revenue, by customer and product, listing the amount of all deductions required to reconcile gross and net revenues;
- c. Total quantity of units sold and the total quantity sold, net of any returns by customer;
- d. Total quantity of units produced;
- e. Marginal cost of production;
- f. Cost of goods sold on a per product basis, including but not limited to: (i) direct labor and material costs, (ii) indirect labor and material costs, (iii) manufacturing overhead costs, (iv) standard costs and any associated variances, (v) actual total costs and variances from standard costs, (vi) gross profit, gross margins, or standard margins on a per product basis, and (vii) all costs other than manufacturing costs, on a per product basis, including but not limited to: (A) commissions and other selling expenses, (B) general and administrative expenses, (C) engineering, research, and development expenses, and (D) net income or net profit before taxes on a per product basis;
- g. Marketing and sales expenses;
- h. Advertising and promotional expenses;
- i. Commission and selling expenses;
- j. General and administrative expenses;
- k. All costs other than standard costs;
- l. Actual total cost;
- m. Average variable cost;

Apple is willing to meet and confer with Defendants regarding the scope of this request.

**REQUEST FOR PRODUCTION NO. 76:**

All documents, communications, and things referring or relating to Apple's process for approving apps for Apple's App Store.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 76:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests "[a]ll documents, communications, and things" without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to this request because the request for discovery "relating to" Apple's process for approving apps for Apple's App Store is vague, ambiguous, overbroad, and does not describe with reasonable particularity the type of information sought. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available.

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will produce responsive, relevant, and non-privileged documents in Apple's possession, custody, and control, which are sufficient to show Apple's standard protocol for review

of applications for Apple's App Store, to the extent such documents exist and are prepared and maintained in the ordinary course, are located after a reasonably diligent search, and are not duplicative of discovery subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

**REQUEST FOR PRODUCTION NO. 77:**

All documents, communications, and things referring or relating to Articles 9.3 or 14.4 of Apple's Developer Agreement as referenced in the Counterclaims, including internal and external communications regarding those provisions.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 77:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request on the grounds that it seeks discovery not relevant to the claims or defenses of any party. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it seeks "[a]ll documents, communications, and things" without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available.

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will produce responsive, relevant, and non-privileged documents in Apple's possession, custody, or control created on or between January 1, 2020 and May 31, 2023 discussing the application of Articles 9.3 or 14.4 of Apple's Developer Agreement to Masimo's application for the "Masimo Health" app, Masimo's "SafetyNet" app, and the Cercacor Ember app to the extent such documents exist, are located by a reasonably diligent search, and are not duplicative of discovery subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

**REQUEST FOR PRODUCTION NO. 78:**

All documents, communications, and things referring or relating to instances where Apple invoked, enforced, or attempted to enforce Article 9.3 or 14.4 of Apple's Developer Agreement as referenced in the Counterclaims, in connection with any app or proposed app.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 78:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request to the extent it pertains to any application other than the Masimo Health App, Masimo's "SafetyNet" app, or the Cercacor Ember app as not relevant to the claims or defenses of any party. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests "[a]ll documents, communications, and things" without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to this request because the request for discovery regarding "instances where Apple invoked, enforced, or attempted to enforce Article 9.3 or 14.4 of Apple's Developer Agreement" and "proposed app" is vague, ambiguous, overbroad, and does not describe with reasonable particularity the type of information sought. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents,



and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available.

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will produce responsive, relevant, and non-privileged documents in Apple's possession, custody, or control created on or between January 1, 2020 and May 31, 2023, which discuss the application of Articles 9.3 or 14.4 of Apple's Developer Agreement to Masimo's application for the "Masimo Health" app, Masimo's "SafetyNet" app, and the Cercacor Ember as well as any documents received from Masimo or Cercacor as part of the review and approval of those applications to the extent such documents exist, are located by a reasonably diligent search, and are not duplicative of discovery subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

**REQUEST FOR PRODUCTION NO. 79:**

All documents, communications, and things referring or relating to new or updated Masimo or Cercacor iOS apps (including for Masimo SafetyNet, Masimo W1, or Cercacor Ember), including Apple's review, evaluation, and decision to approve or reject such apps or updates.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 79:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request on the grounds that it seeks discovery not relevant to the claims or defenses of any party. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests "[a]ll documents, communications, and things" without limitation, including with respect to a relevant temporal or

geographic scope. Apple also objects to the request as overbroad, unduly burdensome, and not proportional to the needs of the case to the extent that it requests discovery concerning Apple's "review, evaluation, and decision to approve or reject" applications that do not appear to have any bearing on the relevant market Masimo pleaded. Apple further objects to this request because the identification of the "Masimo W1" app is vague, ambiguous, overbroad, and does not describe with reasonable particularity the type of information sought, and construes it to refer to the "Masimo Health" app. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available.

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will produce responsive, relevant, and non-privileged documents in its possession, custody, or control created on or between January 1, 2020 and May 31, 2023 concerning Apple's review and approval of the "Masimo Health" app, Masimo's "SafetyNet" app, and the Cercacor Ember app, as well as concerning Apple's review and approval of updates to the Masimo "SafetyNet" app to the extent such documents exist, are located after a reasonably diligent search, and are not duplicative of discovery subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

**REQUEST FOR PRODUCTION NO. 80:**

All documents, communications, and things referring or relating to Masimo's FDA strategies and/or interactions with the FDA.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 80:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request to the extent it seeks Apple documents concerning Masimo's FDA strategies or communications as not relevant to the claims or defenses of any party. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests "all documents, communications, and things" without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to the phrase "Masimo's FDA strategies" on the grounds that it is vague, ambiguous, overbroad, and does not describe with reasonable particularity the type of information sought. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple further objects to this request to the extent that it seeks discovery duplicative of discovery previously produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) and/or *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, No. 337-TA-1276 that is subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple is willing to meet and confer with Defendants regarding the scope of this request.

**REQUEST FOR PRODUCTION NO. 81:**

All documents, communications, and things referring or relating to Apple's App Store Review Guideline 1.4.1, as referenced in the Counterclaims.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 81:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request to the extent it pertains to any application other than the Masimo Health App, Masimo's "SafetyNet" app, or the Cercacor Ember app as not relevant to the claims or defenses of any party. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests "[a]ll documents, communications, and things" without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available.

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will produce responsive, relevant, and non-privileged documents in Apple's possession, custody, or control created on or between January 1, 2020 and May 31, 2023 that discuss the application of App Store Review Guideline 1.4.1 to Masimo's application for the "Masimo Health" app, Masimo's "SafetyNet" app, and to Cercacor's application of the Ember app to the extent such documents exist, are located after a reasonably diligent search, and are not duplicative of discovery subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

**REQUEST FOR PRODUCTION NO. 82:**

All documents, communications, and things referring or relating to Apple using information submitted during the iOS app approval process for competitive purposes, including for development of Apple apps or products.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 82:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request to the extent unrelated with any of Defendants' technology or information as not relevant to the claims or defenses of any party. Apple further objects to this request to the extent that it requests discovery relevant only to claims already subject to litigation between the parties in *Masimo Corp. et al. v. Apple Inc.*, 8:20-cv-00048 (C.D. Cal.) for which discovery is complete. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests "[a]ll documents, communications, and things" without limitation, including with respect to a relevant temporal or geographic scope. Apple objects to the phrase "for competitive purposes" as vague, ambiguous, overbroad, and not describing with reasonable particularity the type of information sought. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks

information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available.

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will produce responsive, relevant, and non-privileged documents in Apple's possession, custody, or control created on or between January 1, 2020 and May 31, 2023 that comprise or discuss information received from Defendants as part of Apple's App Store review process to the extent such documents exist, are located by a reasonably diligent search, and are not duplicative of discovery subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

**REQUEST FOR PRODUCTION NO. 83:**

All documents or communications referencing, relating to, or discussing the practice of efficient infringement or the practice of infringing or misappropriating intellectual property, even after being informed of such improper conduct, because it is more advantageous to do so than pay to lawfully use or develop the intellectual property.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 83:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request to the extent it seeks discovery of alleged infringement of intellectual property other than the Masimo Asserted Patents as not relevant to the claims or defenses of any party. Apple further objects to this request to the extent that it requests discovery relevant only to claims already subject to litigation between the parties in *Masimo Corp. et al. v. Apple Inc.*, 8:20-cv-00048 (C.D. Cal.) for which discovery is complete. Apple further objects to this request as

overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests “all documents or communications” without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to this request because the request for discovery regarding “improper conduct” is vague, ambiguous, overbroad, and does not describe with reasonable particularity the type of information sought. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple’s business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple further objects to this request to the extent that it seeks discovery duplicative of discovery previously produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) and *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, No. 337-TA-1276 that is subject to the parties’ cross-use agreement and the Court’s oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 84:**

All communications with third parties relating to allegations that Apple unlawfully acquired or used intellectual property.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 84:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request to the extent it seeks discovery into allegations that Apple unlawfully acquired or used third-party intellectual property as not relevant to the claims or defenses of any party. Apple further objects to this request to the extent it seeks discovery relevant only to claims already subject to litigation between the parties in *Masimo Corp. et al. v. Apple Inc.*, 8:20-cv-00048 (C.D. Cal.) for which discovery is complete. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests “all communications with third parties” regarding such allegations, and to the extent it requests discovery of anything based on “allegations.” Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple’s business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple further objects to this request to the extent that it seeks discovery duplicative of discovery previously produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) and *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, No. 337-TA-1276 that is subject to the parties’ cross-use agreement and the Court’s oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).



Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 85:**

All documents, communications, and things referring or relating to any decision or consideration by Apple whether to consider, respect or disregard intellectual property rights.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 85:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request to the extent it seeks discovery unrelated to the Masimo Asserted Patents as not relevant to the claims or defenses of any party. Apple also objects to this request to the extent it seeks discovery relevant only to claims already subject to litigation between the parties in *Masimo Corp. et al. v. Apple Inc.*, 8:20-cv-00048 (C.D. Cal.) for which discovery is complete. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests “all documents, communications, or things” without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to this request because the request for discovery relating to “any decision or consideration...whether to consider, respect or disregard intellectual property rights” without defining with reasonable particularity the terms “consider,” “respect,” or “disregard” is vague, ambiguous, overbroad, and does not describe with reasonable particularity the type of information sought. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or

control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple further objects to this request to the extent that it seeks discovery duplicative of discovery previously produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) and *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, No. 337-TA-1276 that is subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 86:**

All documents, communications, and things referring or relating to the quote "good artists copy, great artists steal," Apple's use of pirate imagery and flags, the quote "it's better to be a pirate than join the navy," or Apple's practice of taking something from someone else and making it your own, as explained by Bud Tribble (*see* <https://www.cnet.com/tech/tech-industry/what-steve-jobs-really-meant-when-he-said-good-artists-copy-great-artists-steal/>).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 86:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request as not relevant to the claims or defenses of any party nor proportional to the needs of the case as it seeks discovery unrelated to Defendants or Apple Watch. Apple also objects to this request to the extent it seeks discovery relevant only to claims already subject to litigation between the parties in *Masimo Corp. et al. v. Apple Inc.*, 8:20-cv-00048 (C.D. Cal.) for which discovery is complete. Apple further objects to this request as overbroad, unduly burdensome, and

not proportional to the needs of this case to the extent that it requests “all documents, communications, or things” without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to the request on the grounds that it mischaracterizes statements from the article cited. Apple objects to this request because the request for discovery regarding “pirate imagery and flags” is vague, ambiguous, overbroad, and does not describe with reasonable particularity the type of information sought. No statement in the cited article refers to Apple’s use of “pirate imagery and flags” or the quote “it’s better to be a pirate than join the navy.” Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple’s business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple further objects to this request to the extent that it seeks discovery duplicative of discovery previously produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) and *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, No. 337-TA-1276 that is subject to the parties’ cross-use agreement and the Court’s oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 87:**

All documents, communications, and things referring or relating to the practice of “Sherlocking” or meeting with another company and then Apple deciding to implement an idea or technology from the other company without permission.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 87:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request as not relevant to the claims or defenses of any party. Apple also objects to this request to the extent it seeks discovery relevant only to claims already subject to litigation between the parties in *Masimo Corp. et al. v. Apple Inc.*, 8:20-cv-00048 (C.D. Cal.) for which discovery is complete. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests “all documents, communications, and things” without limitation, including with respect to a relevant temporal or geographic scope. Apple objects to this request because the request for discovery regarding “Sherlocking.”” is vague, ambiguous, overbroad, and does not describe with reasonable particularity the type of information sought. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple’s business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple further objects to this request to the extent that it seeks discovery duplicative of discovery previously produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) and *In the Matter of Certain Light-Based Physiological Measurement*

*Devices and Components Thereof*, No. 337-TA-1276 that is subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 88:**

Communications between Tim Cook and Bruce Sewell related to *U.S. v. Apple Inc., et al.*, No. 1:12-cv-02826-DLC (S.D.N.Y.), as referenced in the video available at <https://www.youtube.com/watch?v=-wuf3KI76Ds&t=2s>, including communications related to the following:

- a. Sewell explaining that case was an example of Apple making a conscious and deliberate choice to use the legal system to gain a "competitive advantage" over others by "sailing as close to the wind" as possible because capturing ebook sales was "so important" to Apple;
- b. Sewell stating Apple "ended up being sued by the government and ended up having to pay a large fine;"
- c. Sewell stating that Apple's CEO, Tim Cook, did not discipline him for his role in allowing Apple to engage in anticompetitive conduct;
- d. Cook applauding Sewell;
- e. Cook stating to Sewell, "that's the right choice;" and
- f. Cook telling Sewell "don't let that scare you, I don't want you to stop pushing the envelope."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 88:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request as seeking discovery—relating to *U.S. v. Apple Inc., et al.*, No. 1:12-cv-02826-DLC (S.D.N.Y) and communications between Apple's CEO and then general counsel about that litigation—that is not relevant to the claims or defenses of any party nor proportional to the needs of the case. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or the work

product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple further objects to this request to the extent that it seeks discovery duplicative of discovery produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) and *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, No. 337-TA-1276 that is subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378). Apple further objects to the request to the extent that the request itself mischaracterizes statements made in the video cited. No statement in the cited video suggests in any way that Apple "made a conscious and deliberate choice to use the legal system to gain a competitive advantage," or that Mr. Sewell "allow[ed] Apple to engage in anticompetitive conduct" Regardless, the conduct at issue in *U.S. v. Apple Inc., et al.*, No. 1:12-cv-02826-DLC (S.D.N.Y), has no bearing on the claims or defenses in this case, or even the relevant market Defendants have alleged.

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 89:**

All documents, communications, and things referring or relating to AliveCor, Omni MedSci and/or Valencell's allegations that Apple misappropriated their intellectual property and/or improperly acquired their technologies, including all communications and interactions with these companies relating to such allegations.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 89:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request to the extent it seeks discovery into third-party allegations of intellectual property infringement or trade secret misappropriation as not relevant to the claims or defenses of any party. Apple further objects to this request to the extent that it seeks discovery relevant only to claims already subject to litigation between the parties in duplicative of discovery produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) for which discovery is complete. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests “[a]ll documents, communications, and things” without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to this request because the request for discovery including the phrase “improperly acquired” is vague, ambiguous, overbroad, and does not describe with reasonable particularity the type of information sought. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple’s business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple further objects to this request to the extent that it seeks discovery duplicative of discovery produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) and *In the Matter of Certain Light-Based Physiological Measurement Devices and*

*Components Thereof*, No. 337-TA-1276 that is subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 90:**

All documents, communications, and things referring or relating to Apple's litigations with AliveCor, Omni MedSci, and Valencell, including discovery responses, deposition and trial testimony of Apple witnesses, unsealed trial exhibits, sealed Apple trial exhibits, and documents produced by Apple.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 90:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request to the extent it seeks discovery into Apple's litigation with third parties and/or third-party allegations of intellectual property infringement or trade secret misappropriation as not relevant to the claims or defenses of any party. Apple further objects to this request to the extent that it seeks discovery relevant only to claims already subject to litigation between the parties in duplicative of discovery produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) for which discovery is complete. Apple further objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests "[a]ll documents, communications, and things" without limitation, including with respect to a relevant temporal or geographic scope. Apple further objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things



that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple further objects to this request to the extent that it seeks discovery duplicative of discovery produced in the cases captioned *Masimo Corp. et al., v. Apple, Inc.*, No. 20-cv-00048 (C.D. Cal.) and *In the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof*, No. 337-TA-1276 that is subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 91:**

All documents, communications, and things referring or relating to any possible, alleged, or actual violations of U.S. federal, state, or foreign antitrust laws, competition laws, anti-bribery laws, or any similar laws, rules, or regulations by Apple or any current or former officer, director, employee, or agent of Apple, including any documents produced or provided to any governmental entity in connection with an investigation of a violation or alleged violation of the same laws, rules, or regulations.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 91:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request to the extent it seeks discovery concerning "any possible, alleged, or actual violations of U.S. federal, state, or foreign antitrust laws, competition laws, anti-bribery laws, or any similar laws, rules, or regulations" as not relevant to the claims or defenses of any party. In addition, Apple specifically objects to this request as overbroad, unduly burdensome, and not proportional to the needs of this case to the extent that it requests "[a]ll documents,

1276 that is subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use. D.I. 95 (No. 22-1377); D.I. 83 (No. 22-1378).

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent that Apple understands this request, Apple responds as follows:

Apple will produce responsive, relevant, and non-privileged documents in Apple's possession, custody, and control that constitute or describe analyses of the impacts of any price increases on the Apple Watch Series 4-8, SE and Ultra, including financial impacts and customer reactions, to the extent they exist, are located after a reasonably diligent search, and are not duplicative of discovery subject to the parties' cross-use agreement and the Court's oral order regarding permissible cross-use.

**REQUEST FOR PRODUCTION NO. 112:**

All documents, communications, and things referring to both Apple Watch and Apple's "ecosystem" of interconnected products.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 112:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request as not relevant to the claims or defenses of any party to the extent it seeks "documents, communications, and things referring to . . . Apple's 'ecosystem' of interconnected products." To the extent any responsive documents would be relevant to the claims or defenses of any party, or proportional to needs of the case, it is covered by Apple's responses to other requests herein. Apple further objects to this request as overbroad, unduly burdensome, irrelevant, and not proportional to the needs of this case to the extent it seeks "[a]ll documents, communications, and things" without limitation, including with respect to a relevant temporal or geographic scope. Apple objects to this request because the phrase "Apple's 'ecosystem' of interconnected products"

is vague, ambiguous, overbroad, and seeks materials that are neither relevant nor proportional to the needs of the case. Apple objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple's business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available.

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 113:**

All documents, communications, and things referring or relating to Apple's strategy to build and maintain users in Apple's ecosystem.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 113:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request as not relevant to the claims or defenses of any party to the extent it seeks "documents, communications, and things referring or relating to . . . Apple's strategy to build and maintain users in Apple's ecosystem." To the extent any responsive documents would be relevant to the claims or defenses of any party, or proportional to needs of the case, it is covered by Apple's responses to other requests herein. Apple further objects to this request as overbroad, unduly burdensome, irrelevant, and not proportional to the needs of this case to the extent it seeks "[a]ll documents, communications, and things" without limitation, including with respect to a relevant

temporal or geographic scope. Apple objects to this request because the phrase “Apple’s ecosystem” is vague, ambiguous, overbroad, and seeks materials that are neither relevant nor proportional to the needs of the case. Apple objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple’s business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available.

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 114:**

All documents, communications, and things referring or relating to Apple’s strategy regarding functionality, compatibility, or interoperability of products within Apple’s ecosystem, including documents referring or relating to limiting functionality, compatibility, or interoperability to Apple-approved apps and products.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 114:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request as not relevant to the claims or defenses of any party to the extent it seeks “Apple’s strategy regarding functionality, compatibility, or interoperability of products within Apple’s ecosystem.” Apple further objects to this request as overbroad, unduly burdensome, irrelevant, and not proportional to the needs of this case to the extent it seeks “[a]ll documents, communications, and things” without limitation, including with respect to a relevant temporal or

geographic scope. Apple also objects to this request because the phrases and terms “Apple’s strategy regarding functionality, compatibility, or interoperability of products within Apple’s ecosystem,” are vague, ambiguous, overbroad, and seek materials that are neither relevant nor proportional to the needs of the case. Apple further objects to this request to the extent it seeks information, documents, and/or things that are outside the possession, custody, or control of Apple; that are not kept in the ordinary course of Apple’s business; that can be obtained from other sources that are more convenient, less burdensome, and/or less expensive; that are equally available to Defendants; or that are publicly available. Apple objects to this request to the extent it seeks information protected from disclosure by the attorney-client privilege, common interest privilege, and/or work product doctrine, or that is otherwise protected from disclosure.

Based on its investigation to date, and subject to and without waiving the foregoing general and specific objections, and to the extent Apple understands this request, Apple responds as follows:

Apple will not search for or produce documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 115:**

All documents, communications, and things referring or relating to any alleged legitimate business interests or procompetitive benefits that You contend justify Apple’s conduct.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 115:**

Apple incorporates by reference its General Objections. In addition, Apple specifically objects to this request as overbroad, unduly burdensome, irrelevant, and not proportional to the needs of this case to the extent it seeks “[a]ll documents, communications, and things” without limitation, including with respect to a relevant temporal or geographic scope. Apple objects to this request because the phrases and terms “any alleged legitimate business interests or procompetitive benefits” relating to “Apple’s conduct” is vague, ambiguous, overbroad, and seeks materials that

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Dated: June 13, 2023

Respectfully submitted,

POTTER ANDERSON & CORROON LLP

By: /s/ Bindu A. Palapura  
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Bindu A. Palapura (#5370)  
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*Attorneys for Plaintiff/Counter-Defendant  
Apple Inc.*

**CERTIFICATE OF SERVICE**

I, Mark A. Ford, hereby certify that on June 13, 2023, true and correct copies of the within document were served on the following counsel of record at the addresses and in the manner indicated:

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/s/ Mark A. Ford  
Mark A. Ford

# EXHIBIT B



CONFIDENTIAL – ATTORNEYS’ EYES ONLY

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,

*Plaintiff,*

v.

MASIMO CORPORATION and  
SOUND UNITED, LLC,

*Defendants.*

C.A. No. 22-1378-MN-JLH

**JURY TRIAL DEMANDED**

MASIMO CORPORATION and  
CERCACOR LABORATORIES, INC.,

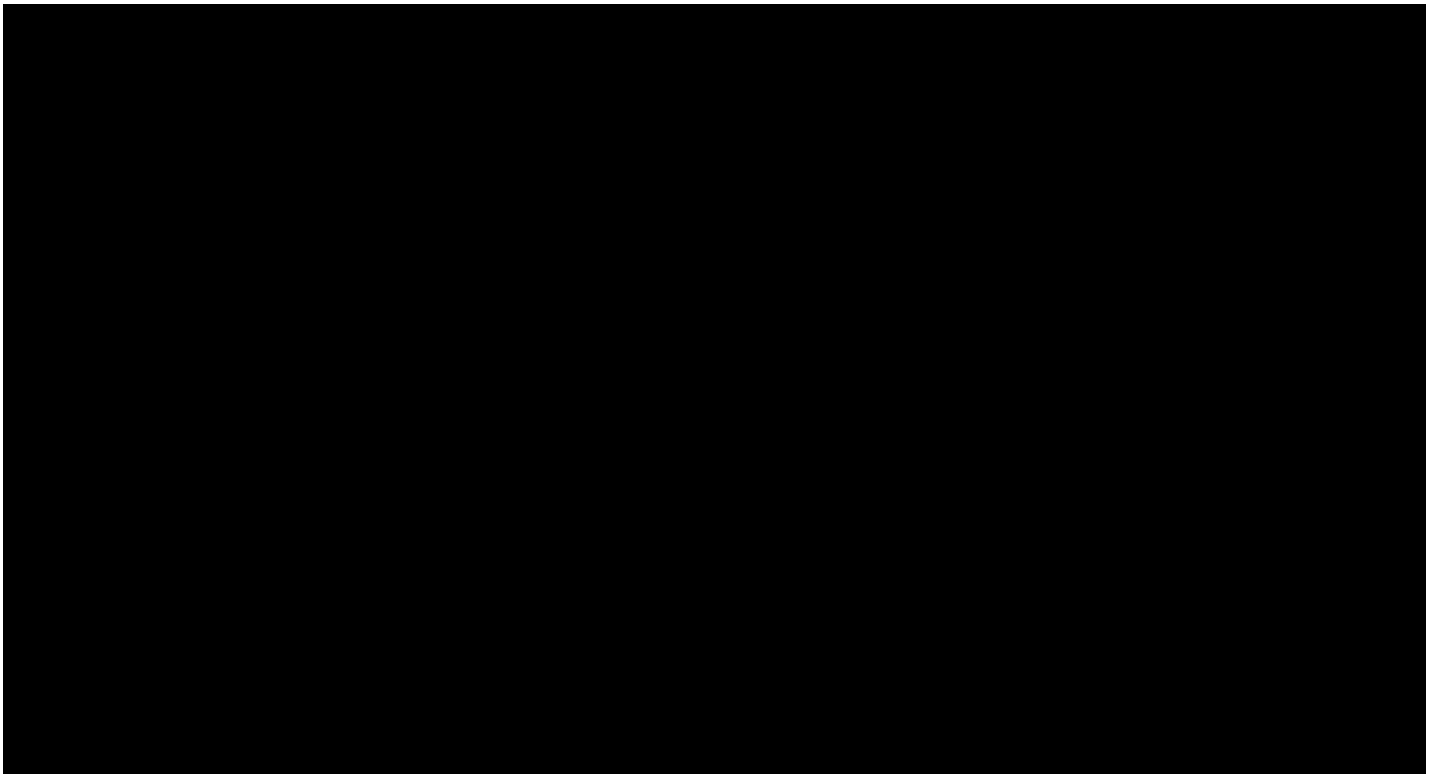
*Counter-Claimants,*

v.

APPLE INC.

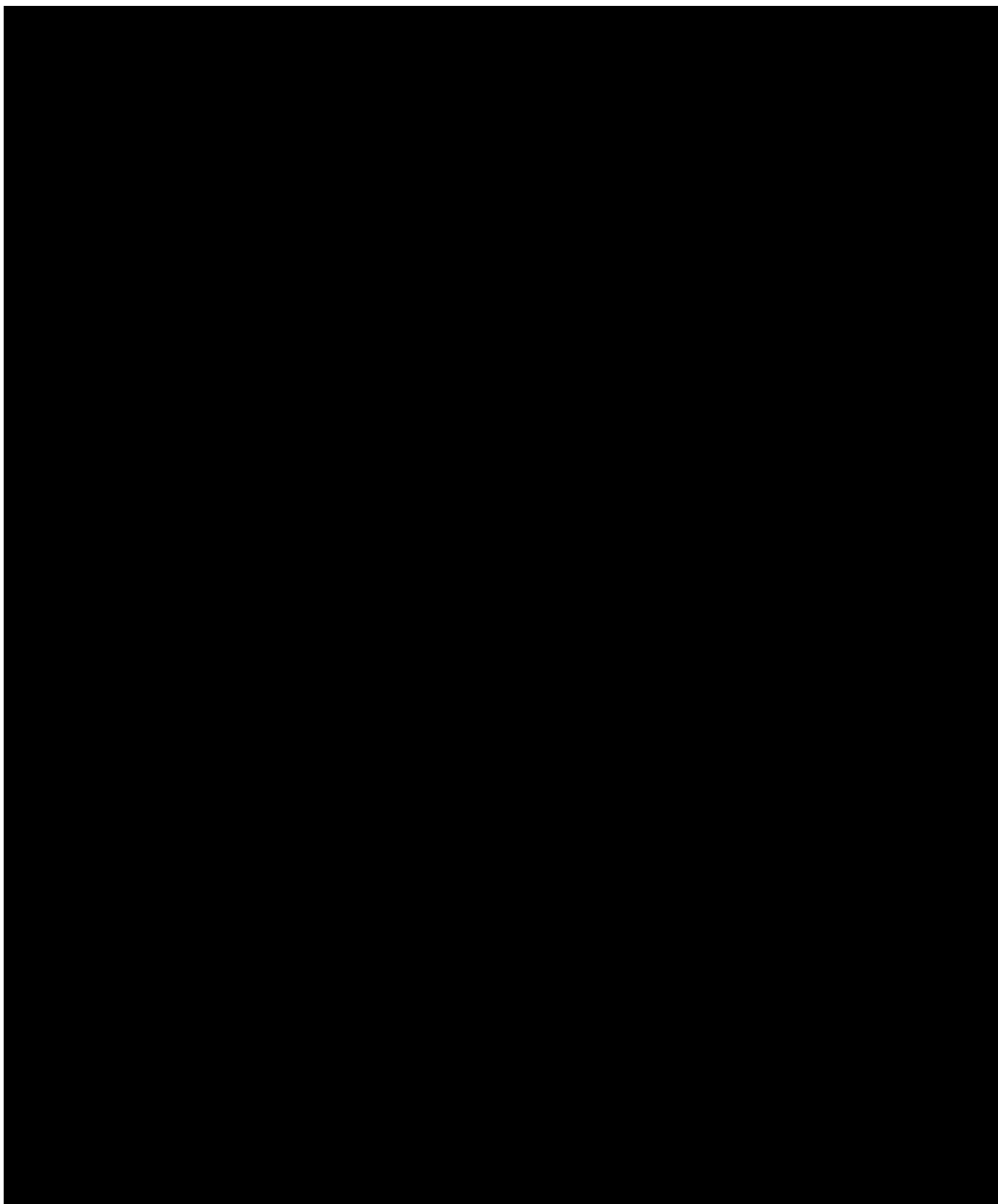
*Counter-Defendant.*

**DEFENDANT MASIMO CORPORATION’S RESPONSES AND OBJECTIONS TO  
APPLE INC.’S SECOND SET OF INTERROGATORIES (4-14)**

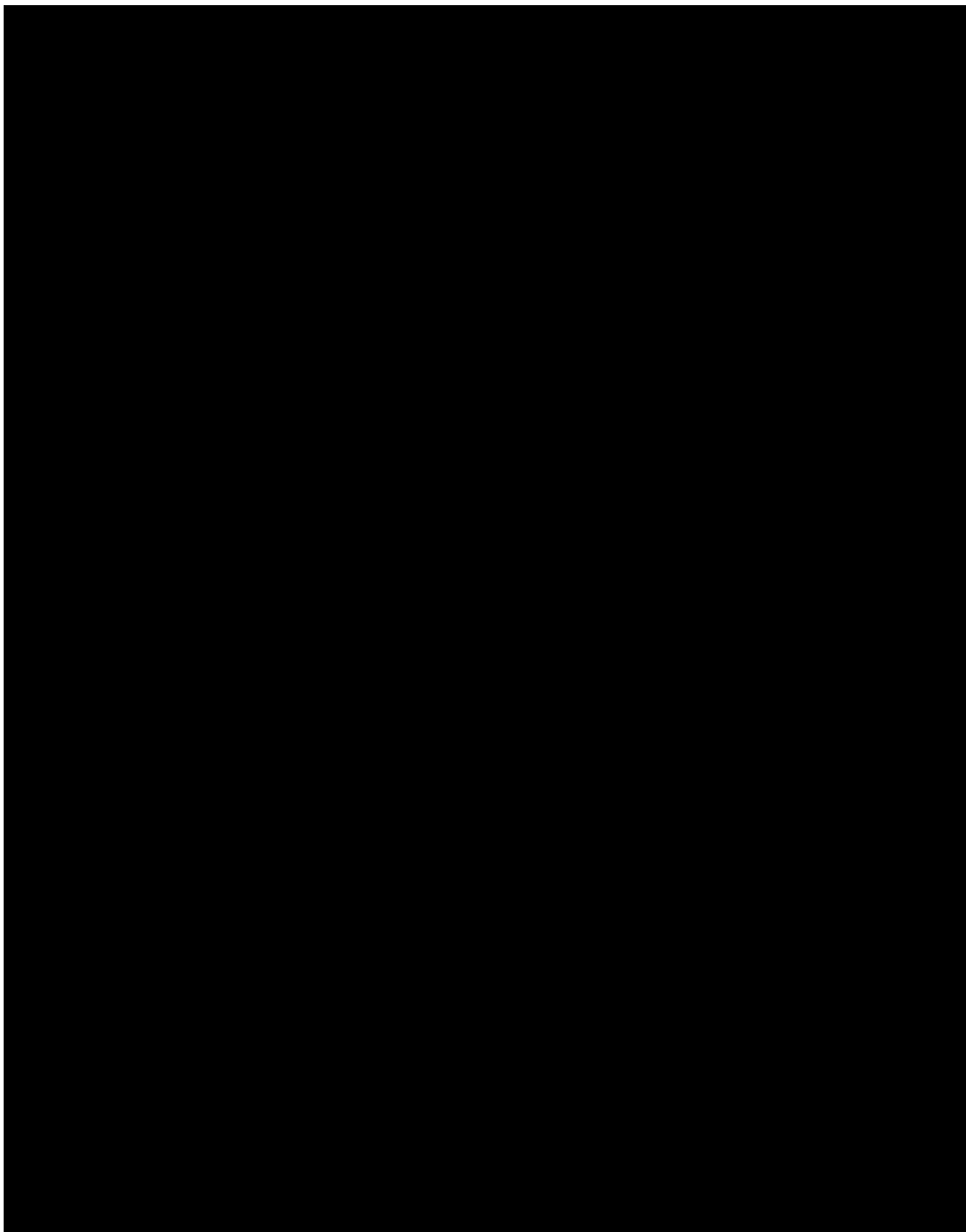


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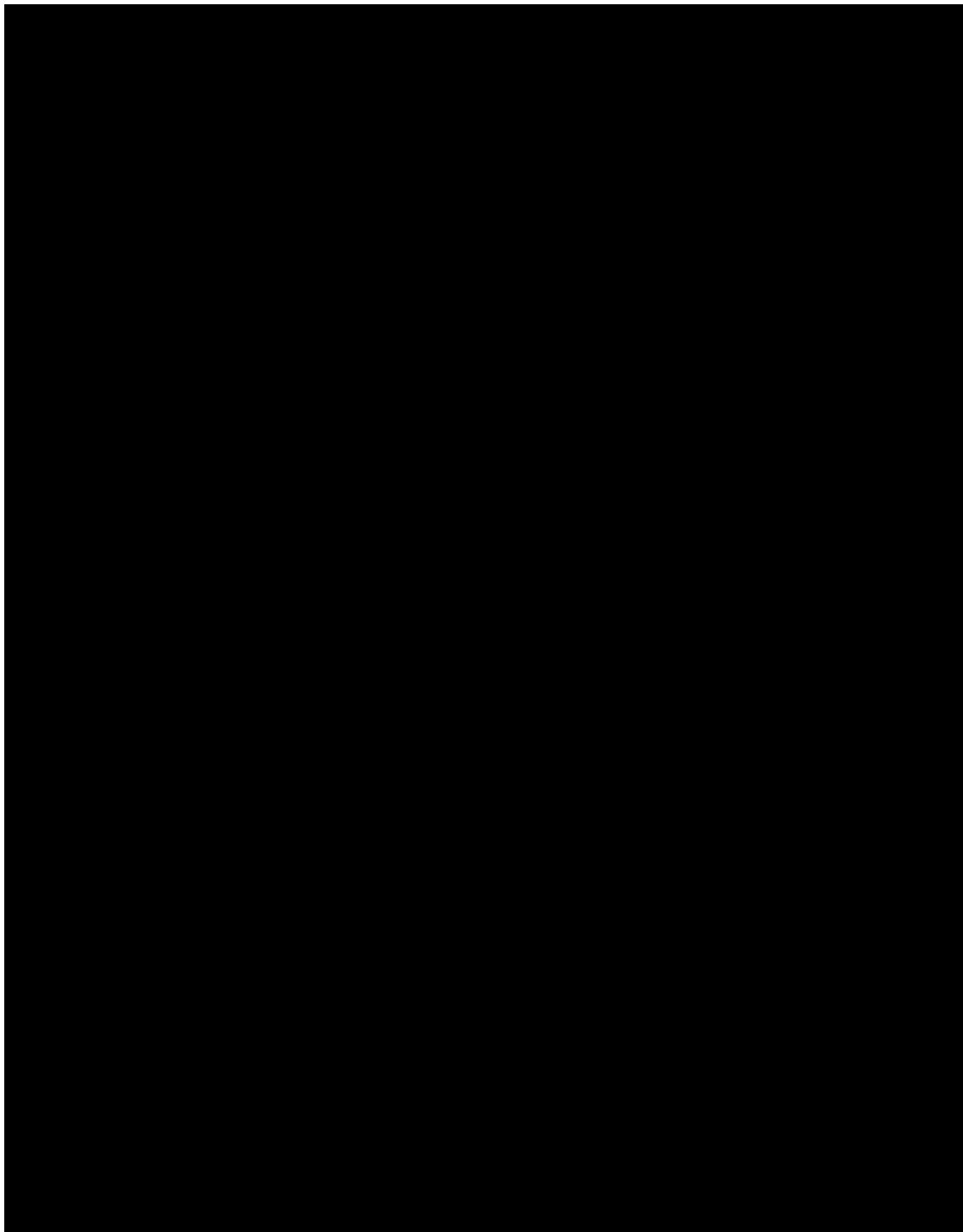
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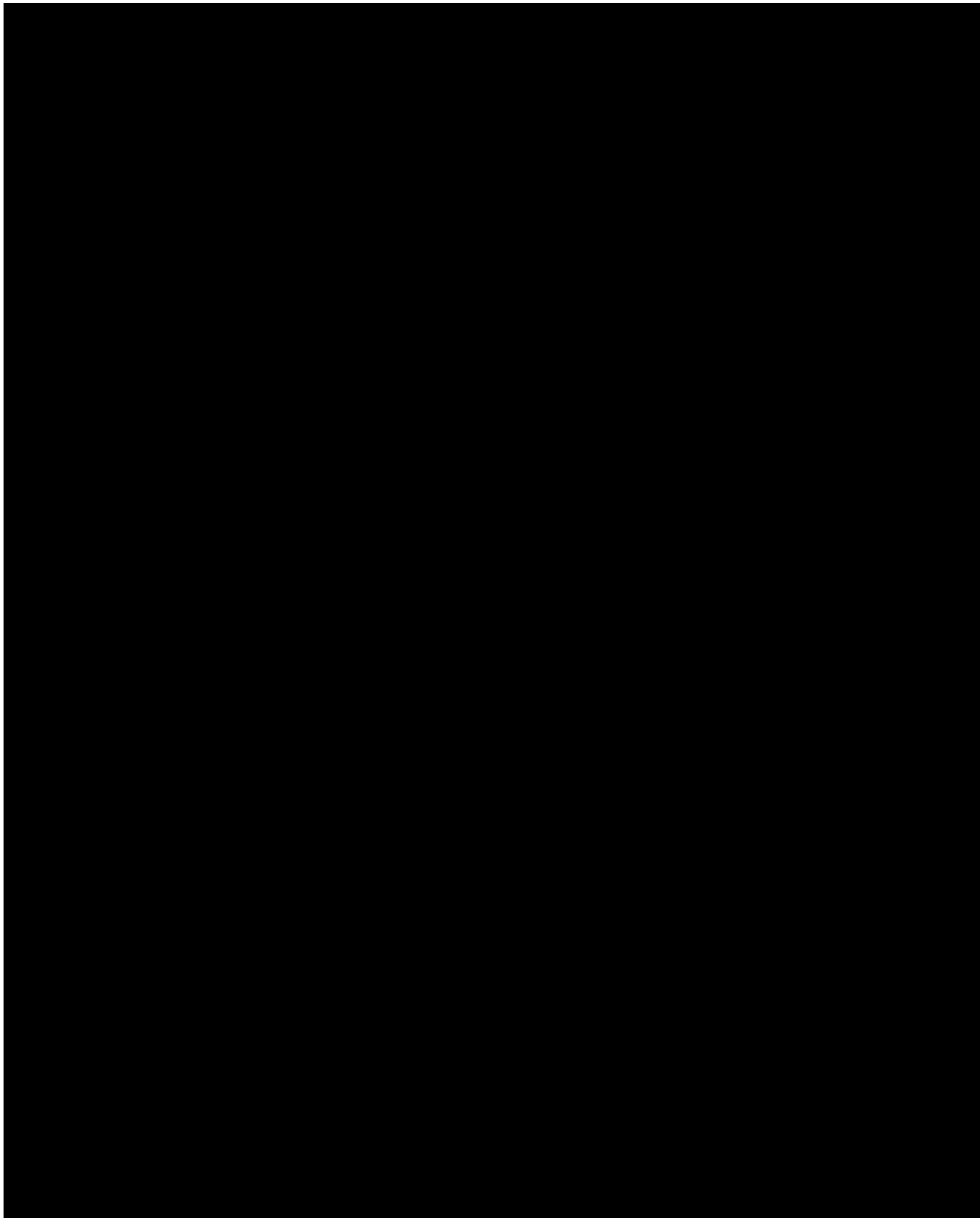
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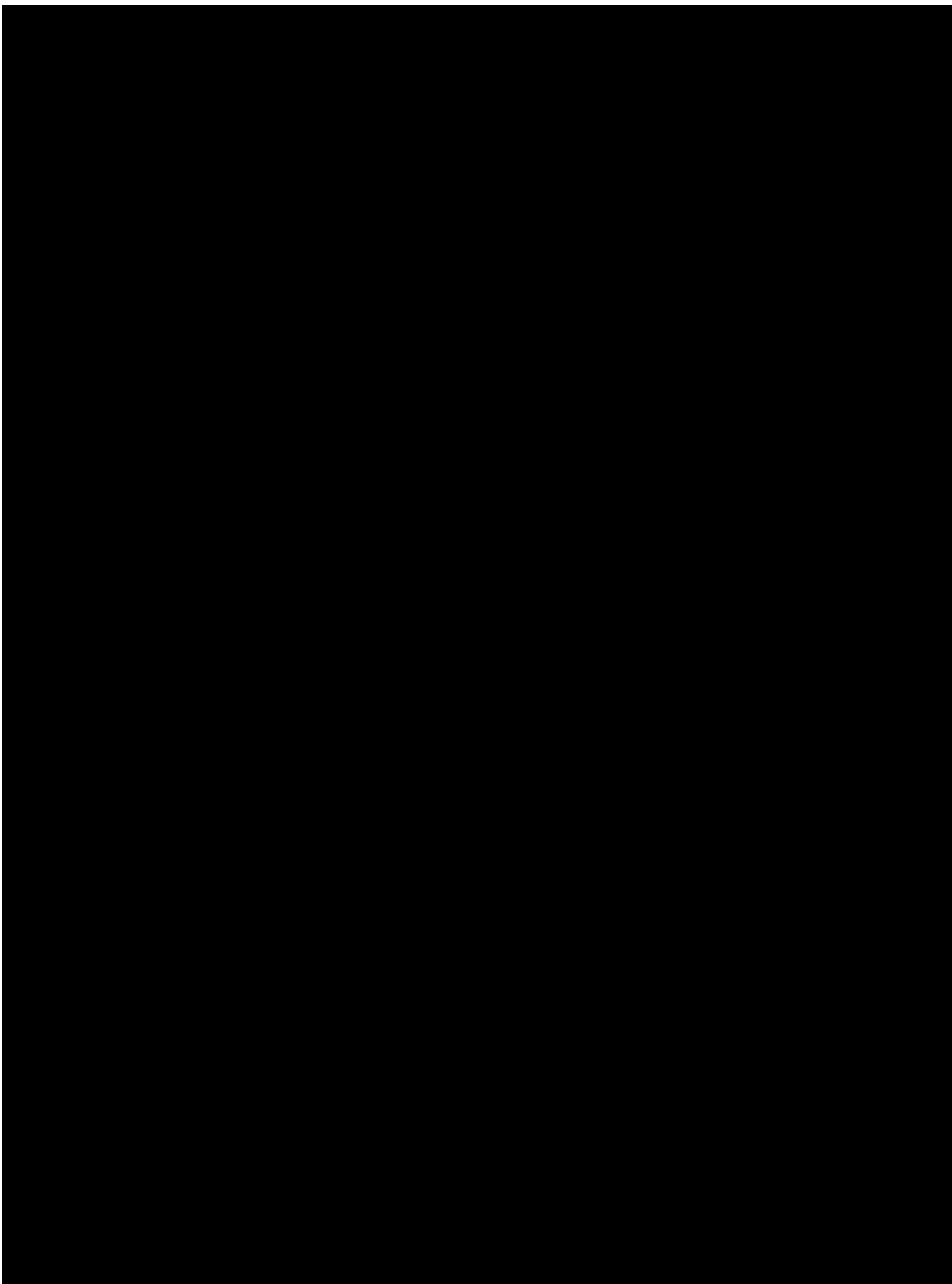
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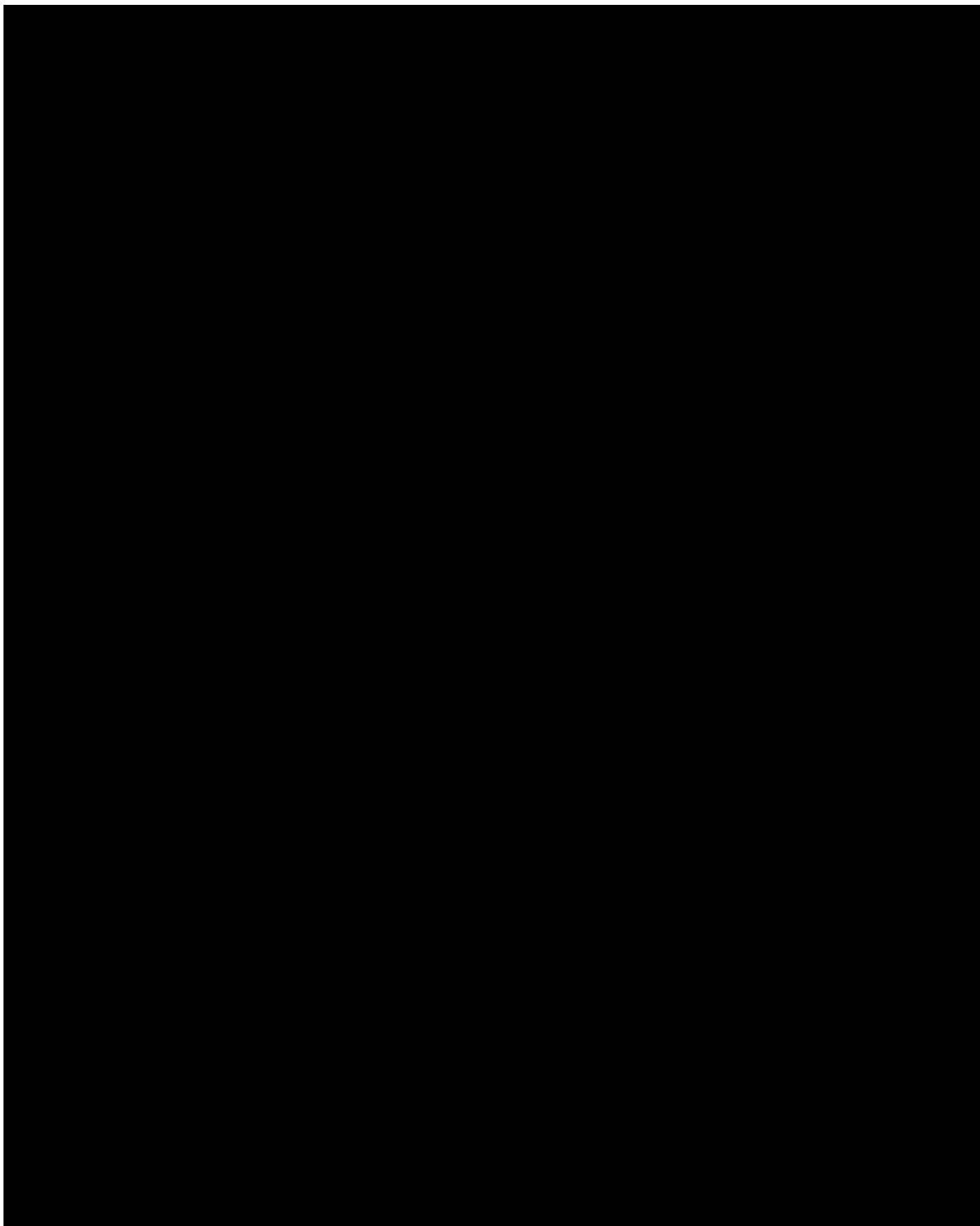
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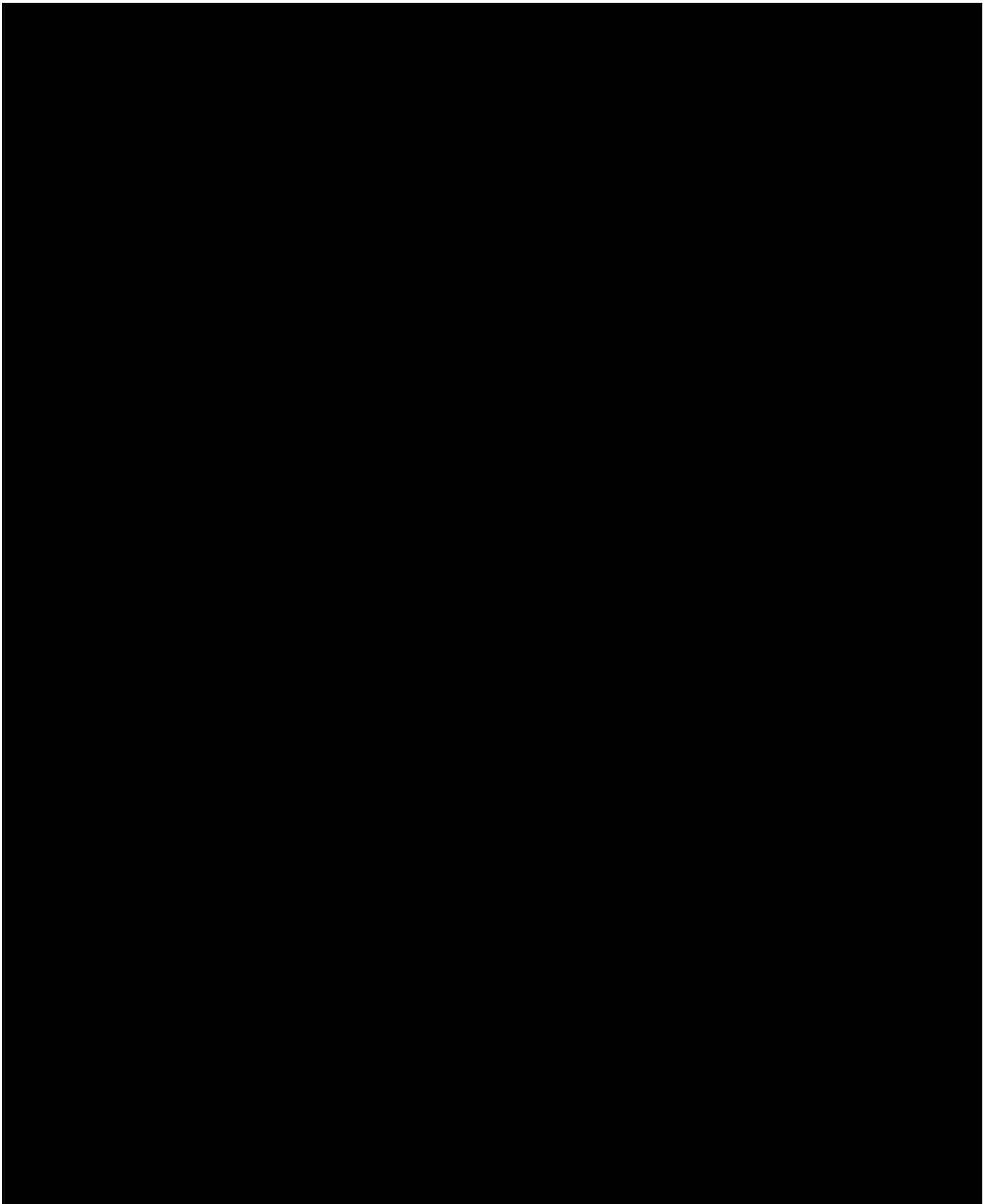


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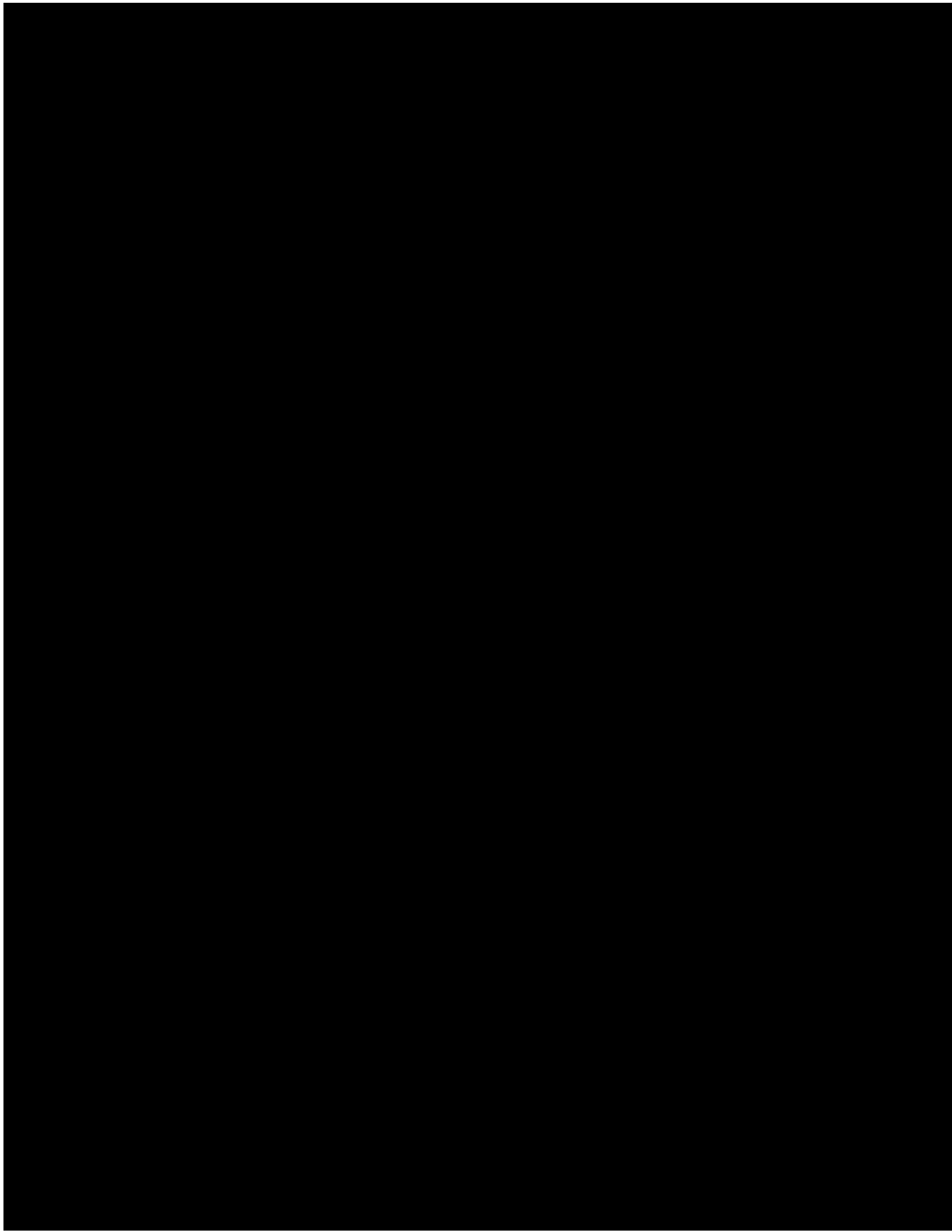




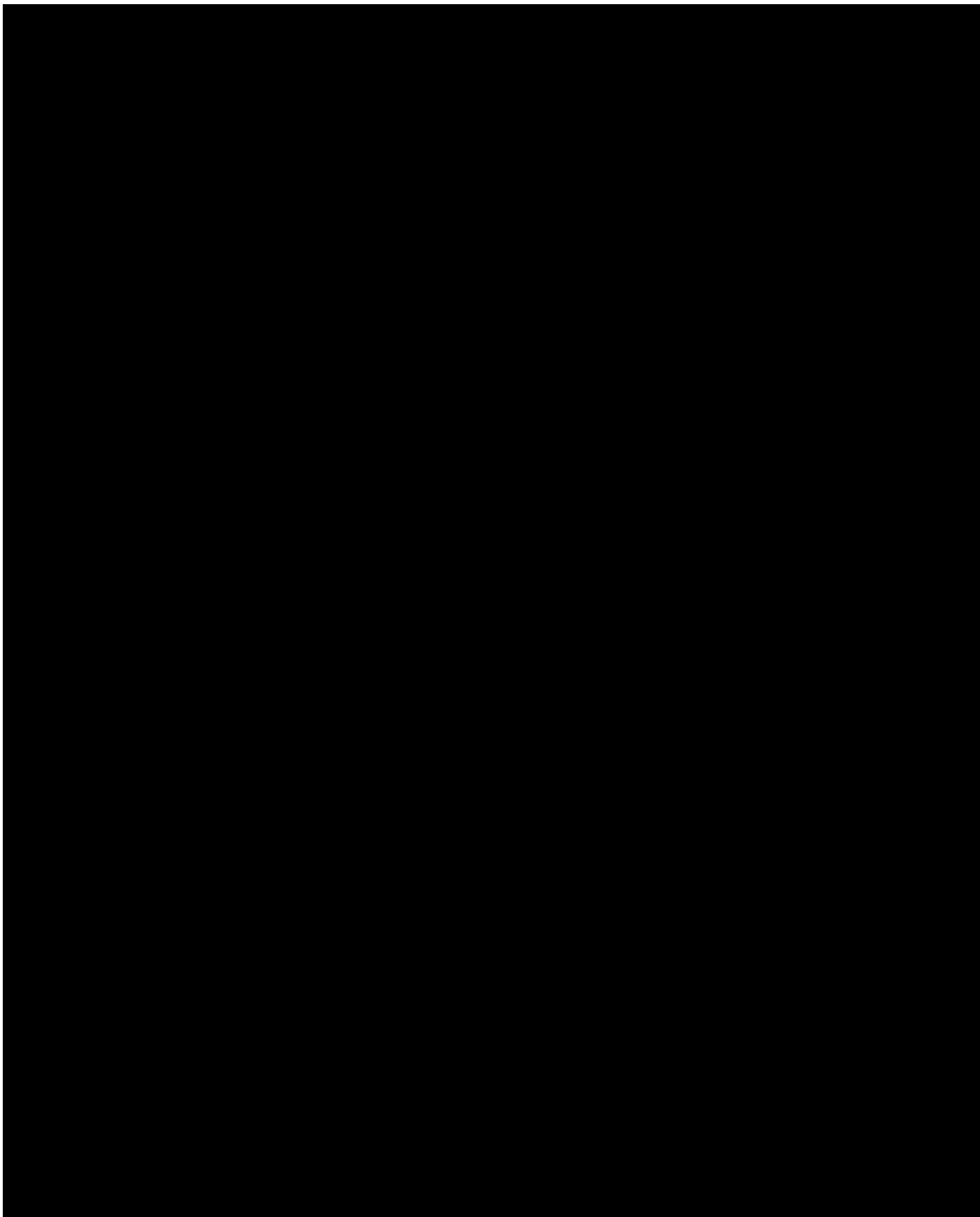
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CONFIDENTIAL – ATTORNEYS’ EYES ONLY

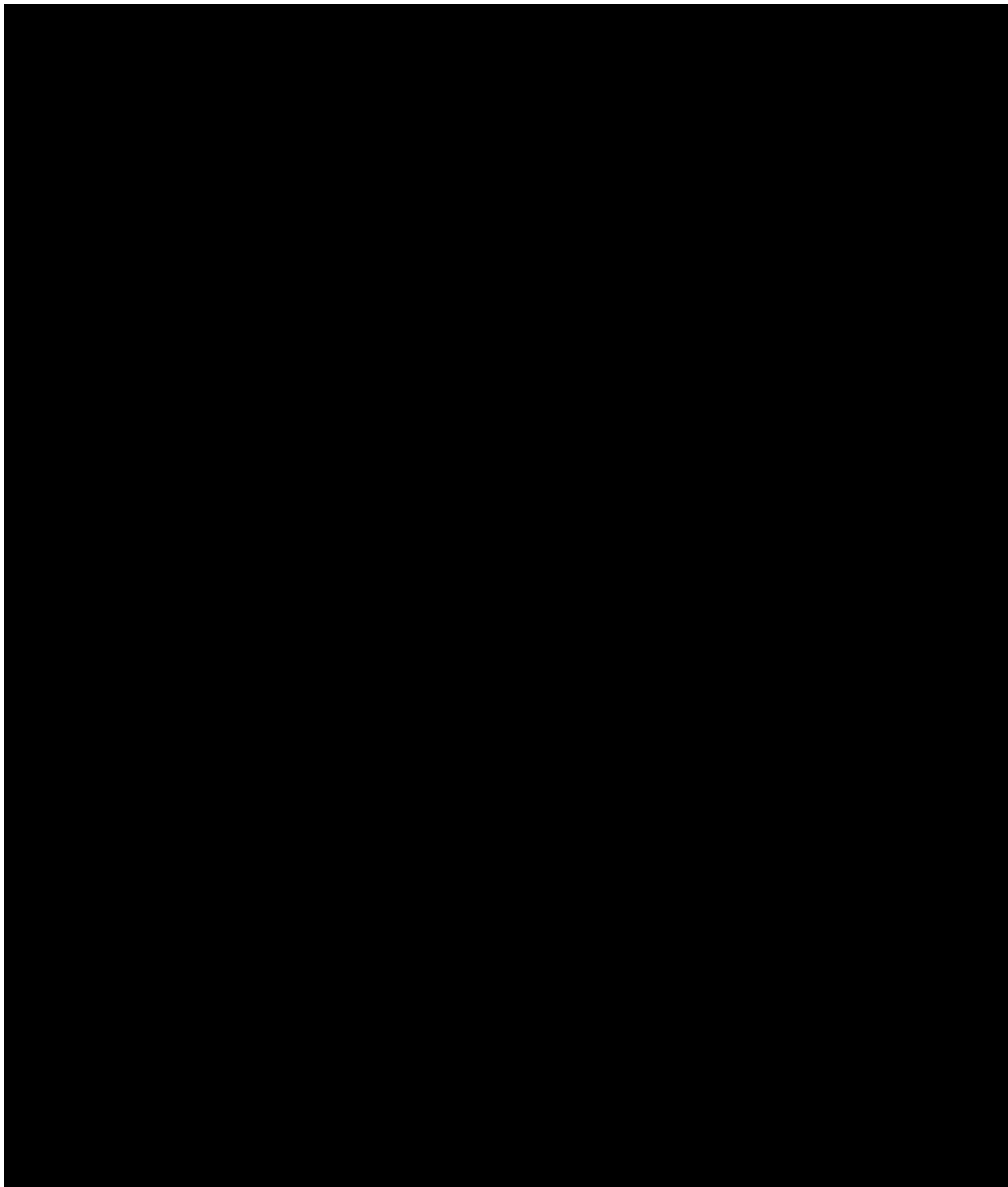


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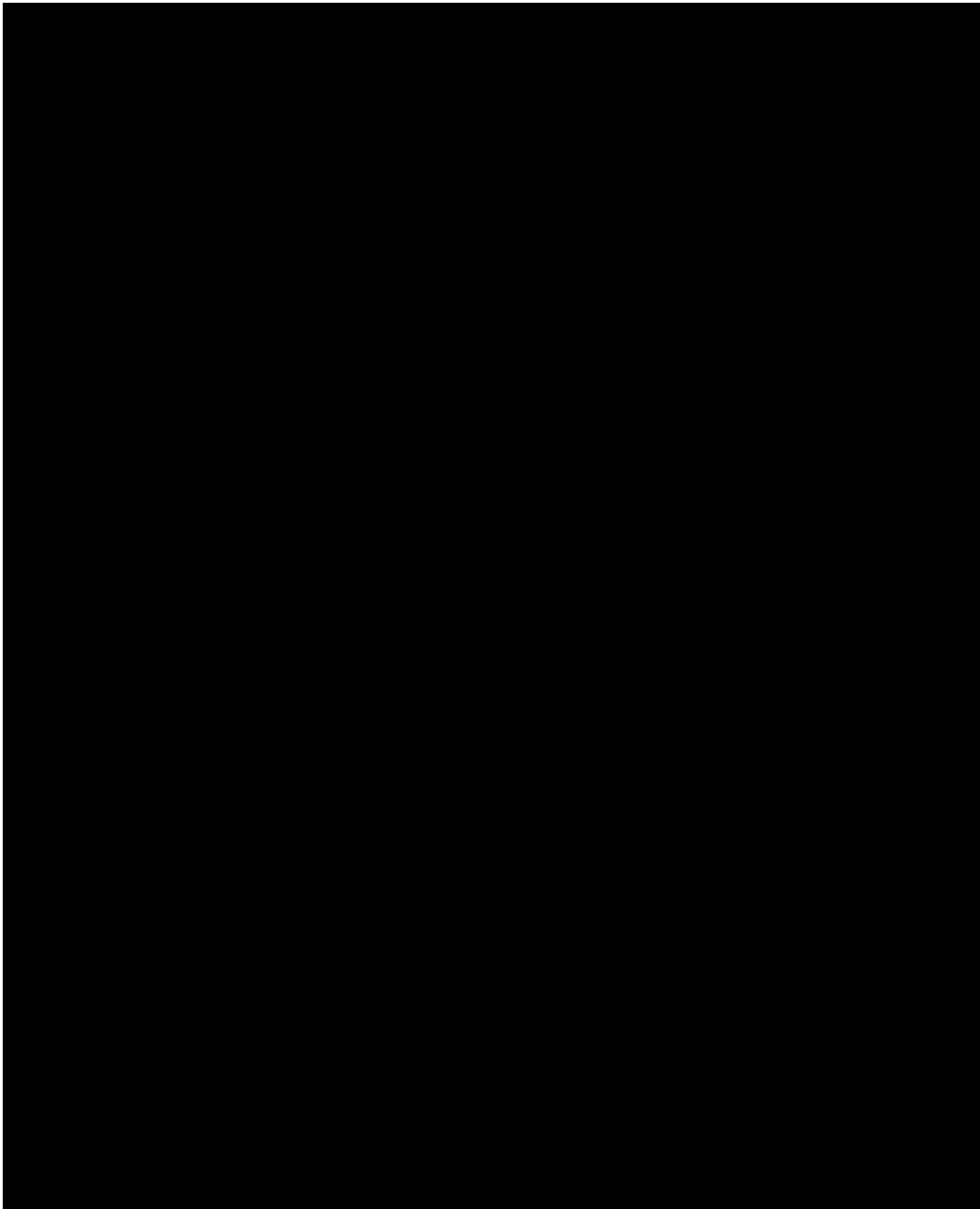


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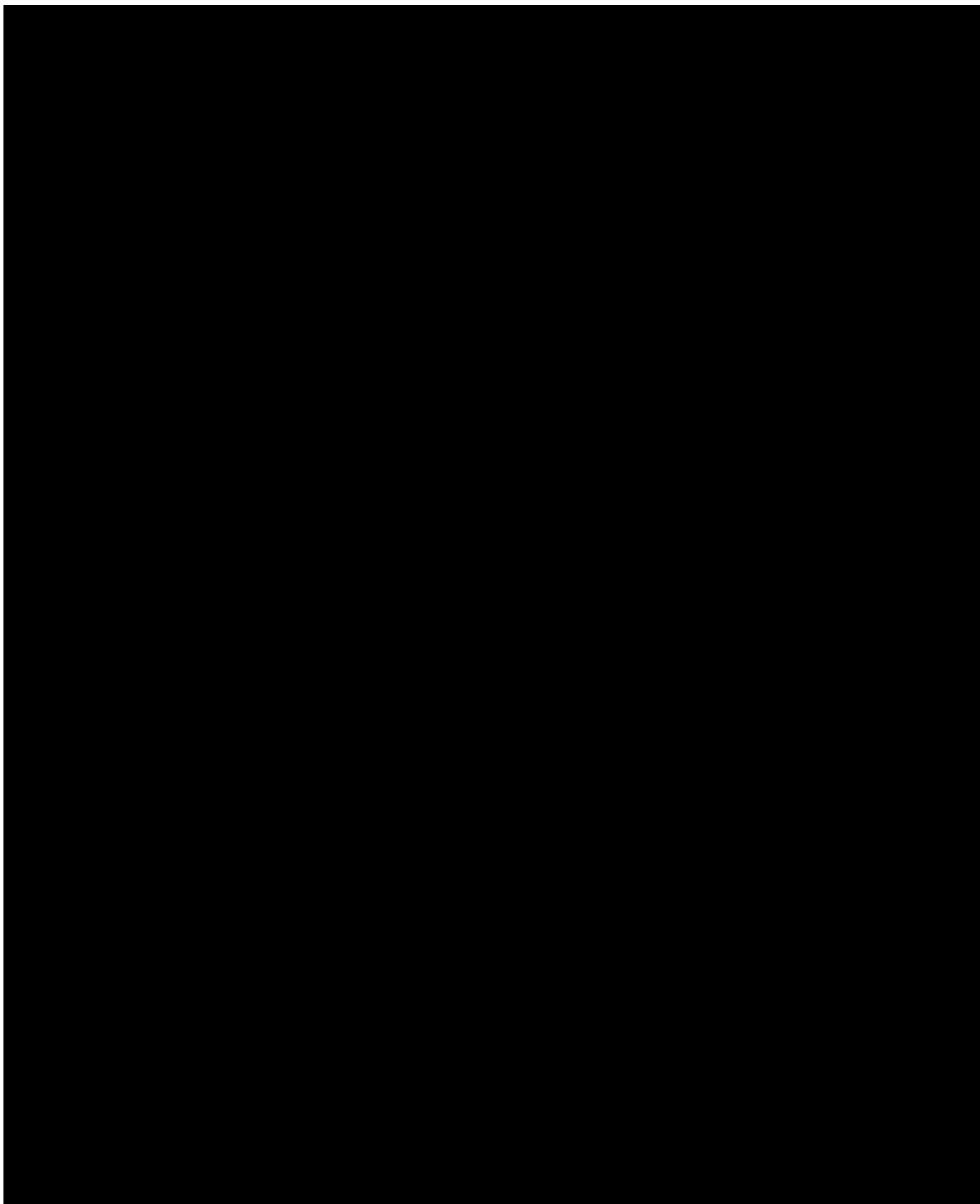
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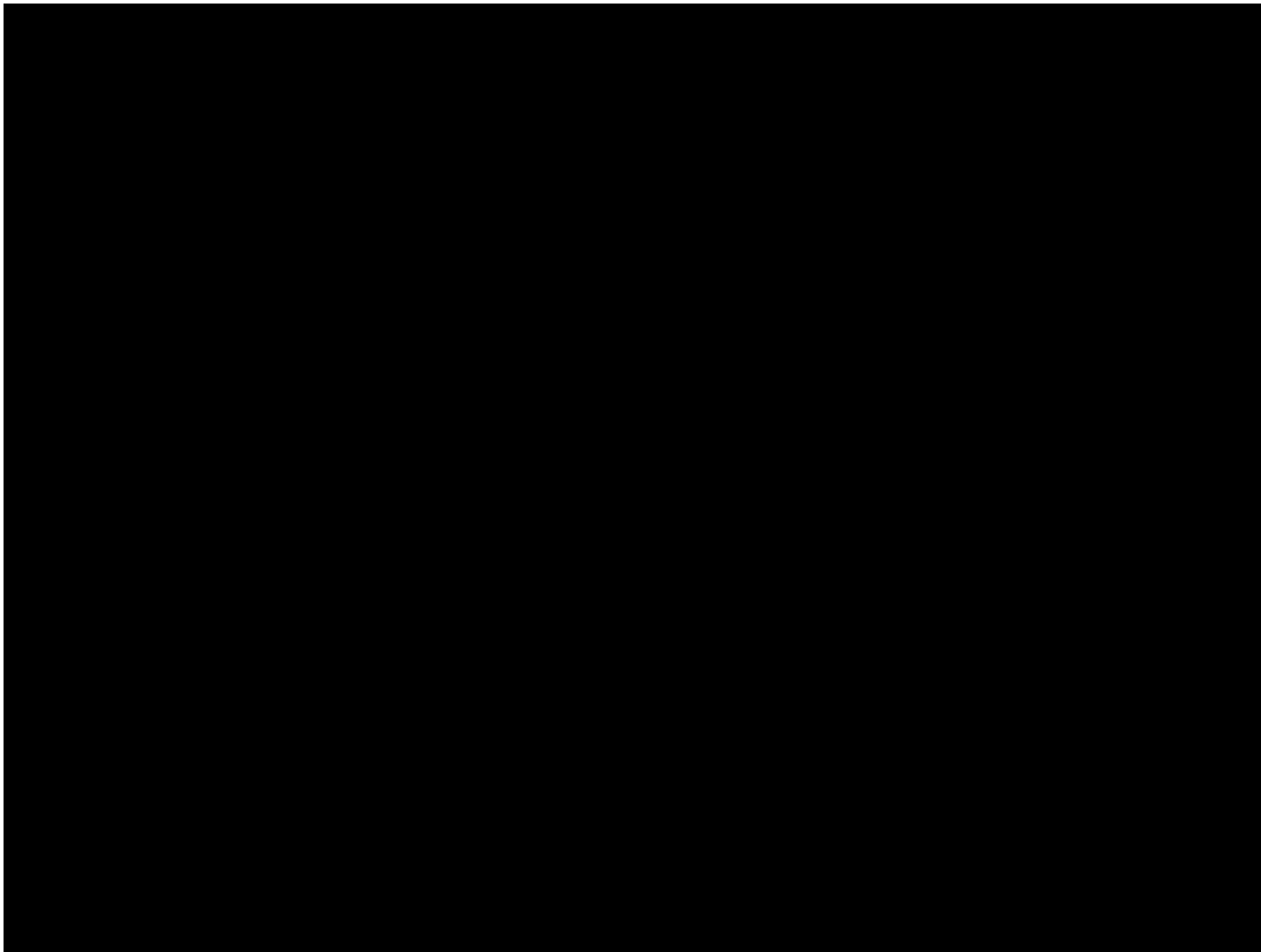
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CONFIDENTIAL – ATTORNEYS’ EYES ONLY



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June 26, 2023

PHILLIPS McLAUGHLIN & HALL, P.A.

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 26, 2023, a true and correct copy of the foregoing document was served on the following counsel of record at the addresses and in the manner indicated:

***VIA ELECTRONIC MAIL:***

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John M. Desmarais Kerri-Ann Limbeek Cosmin Maier Jordan N. Malz Benjamin N. Luehrs Joze Welsh Jamie L. Kringstein Jennifer M. Przybylski Carson Olsheski Desmarais LLP 230 Park Avenue New York, NY 10169 jdesmarais@desmaraisllp.com klimbeek@desmaraisllp.com cmaier@desmaraisllp.com jmalz@desmaraisllp.com bluehrs@desmaraisllp.com jwelsh@desmaraisllp.com jkringstein@desmaraisllp.com jprzybylski@desmaraisllp.com colsheski@desmaraisllp.com	Jennifer Milici Dominic Vote Leon B. Greenfield Wilmer Cutler Pickering Hale and Dorr LLP 1875 Pennsylvania Avenue, NW Washington DC 20006 jennifer.milici@wilmerhale.com dominic.vote@wilmerhale.com leon.greenfield@wilmerhale.com
Mark A. Ford Wilmer Cutler Pickering Hale and Dorr LLP 60 State Street Boston, MA 02109 mark.ford@wilmerhale.com	

June 26, 2023

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/s/ Megan C. Haney  
Megan C. Haney (#5016)

# EXHIBIT C

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

APPLE INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 22-1377-MN-JLH
	)	
MASIMO CORPORATION and	)	<b>JURY TRIAL DEMANDED</b>
SOUND UNITED, LLC,	)	
	)	
Defendants.	)	
<hr/>		
MASIMO CORPORATION and	)	
SOUND UNITED, LLC,	)	
	)	
Counter-Claimants,	)	
	)	
v.	)	
	)	
APPLE INC.,	)	
	)	
Counter-Defendant.	)	
<hr/>		
APPLE INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 22-1378-MN-JLH
	)	
MASIMO CORPORATION and	)	<b>JURY TRIAL DEMANDED</b>
SOUND UNITED, LLC,	)	
	)	
Defendants.	)	
<hr/>		
MASIMO CORPORATION,	)	
CERCACOR LABORATORIES, INC., and	)	
SOUND UNITED, LLC,	)	
	)	
Counter-Claimants,	)	
	)	
v.	)	
	)	
APPLE INC.,	)	
	)	
Counter-Defendant.	)	

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**DECLARATION OF MARK D. SELWYN IN SUPPORT OF APPLE’S LETTER TO  
THE HONORABLE JENNIFER L. HALL FROM DAVID E. MOORE**

I, Mark D. Selwyn, declare and state as follows:

1. I am a partner at the law firm of Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”), counsel for Plaintiff and Counterclaim-Defendant Apple Inc. (“Apple”) in the above-captioned matters. Together with my partners, I serve as one of the lead counsel for Apple in *Masimo Corp. et al. v. Apple, Inc.*, 8:20-cv-00048-JVS-JDE (C.D. Cal.) (“C.D. Cal. Litigation”).

2. The following is based on my personal knowledge and investigation, and if called upon to do so, I could and would competently testify thereto.

3. I understand that Masimo Corporation (“Masimo”) seeks discovery in this litigation relating to its allegation that Apple engages in what Masimo calls “‘efficient’ or ‘predatory’ infringement” and “Sherlocking.” *See* Masimo’s July 21, 2023 Letter Br. at 2 (C.A. No. 22-1377-MN-JLH, D.I. 189; C.A. No. 22-1378-MN-JLH, D.I. 192).

4. I also understand that Masimo seeks an order that certain antitrust-related document discovery should cover the time period beginning October 20, 2018, four years before the filing of Apple’s complaints in this litigation. *Id.* at 3. In this declaration, I address the overlap of Masimo’s requests with discovery that it sought and obtained in the C.D. Cal. Litigation.

5. Masimo filed its Complaint in the C.D. Cal. Litigation on January 9, 2020. *See* C.D. Cal. Litigation, D.I. 1. Masimo subsequently amended its Complaint several times. Attached as Exhibit 1 is a true and accurate copy of the public version of the operative Fourth Amended Complaint in the C.D. Cal. Litigation, D.I. 295-2.

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6. The C.D. Cal. Complaint asserts that Apple misappropriated Masimo alleged trade secrets and confidential information. Ex. 1 at ¶ 8.<sup>1</sup> The Complaint describes a 2013 meeting between Apple and Masimo “regarding a potential collaboration,” following which Masimo alleges that “Apple quickly began trying to hire Masimo employees, including engineers and key management.” *Id.* at ¶ 19. Masimo specifically focused on Apple’s hiring of Michael O’Reilly, Masimo’s former Chief Medical Officer and Executive Vice President for Medical Affairs, and Marcelo Lamego, Cercacor’s former Chief Technical Officer and a former Research Scientist at Masimo. *Id.* ¶¶ 20-24. The Complaint then asserts that Apple “misappropriated [Masimo’s] Confidential Information by acquisition at least from [Masimo’s] former employees who left [Masimo] to work for [Apple].” *Id.* at ¶ 228; *see also id.* (“For example, upon information and belief, O’Reilly and Lamego disclosed Plaintiffs’ Confidential Information, without Plaintiffs’ consent, to Defendant”); *id.* 223-267 (allegations of misappropriation).

7. Fact discovery in the C.D. Cal. Litigation opened in April 2020, C.D. Cal. Litigation, D.I. 33, and closed in August 2022, *id.*, D.I. 627. During fact discovery, Apple responded to 779 requests for production, and produced over 290,000 documents comprising over 3.1 million pages.

8. Fact discovery in the C.D. Cal. Litigation concerned not only the specific claims of misappropriation based on Apple’s hiring of Dr. O’Reilly and Dr. Lamego, but also Masimo’s allegation regarding “efficient infringement” by Apple. Masimo sought and ultimately obtained an order compelling production of “documents regarding the practice of efficient infringement,” as requested by Request No. 446 in Masimo’s Ninth Set of Requests for Production. Attached as

---

<sup>1</sup> Masimo’s allegations in the C.D. Cal. Litigation originally included claims for patent infringement. Those claims were stayed based on Apple’s filing of petitions for *inter partes* review for each of the asserted patents. *See* C.D. Cal. Litigation, D.I. 222.

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Exhibit 2 is true and accurate copy of a March 17, 2022 discovery order requiring confirmation that Apple completed a reasonably diligent search for any documents concerning “efficient infringement” (*see* pages 3-4). In connection with responding to Masimo’s request, Apple searched dozens of ESI custodians’ documents and e-mails for the terms “efficient infringement” and “sherlock\*” and produced the non-privileged documents hitting on those terms.

9. Masimo also sought and obtained corporate deposition testimony on the topics of “efficient infringement” and “Sherlocking.” Apple presented Principal Counsel & Senior Manager, IP Transactions, Jackie Harlow, as its Rule 30(b)(6) witness to address topics including “[a]ll discussion, analysis, and consideration of efficient infringement or economically beneficial infringement of another party’s intellectual property rights...” (Topic 68) and “[t]he discussion, analysis, and consideration of ‘sherlocking’ or Apple developing and releasing functionality that is implemented by a third party....” (Topic 70). Attached as Exhibit 3 is a true and accurate copy of Masimo’s Rule 30(b)(6) Notice. At her August 5, 2022 deposition, Ms. Harlow was questioned extensively on both topics. Attached as Exhibit 4 is a true and accurate excerpt from Ms. Harlow’s August 5, 2022 deposition during which she testified that “[e]fficient infringement’ is not a term that Apple uses. It’s not a practice at Apple.” Ex. 4 at 133-138. She similarly confirmed Sherlocking is “not an Apple term” and that “Apple is absolutely not engaged in Sherlocking.” *Id.* at 109-128. Masimo never contended that the corporate testimony on these subjects was in any way inadequate or incomplete.

10. The C.D. Cal. Litigation also included discovery that is relevant to Masimo’s antitrust claims here, including market definition. For example, Masimo requested, and Apple produced, extensive discovery during the C.D. Cal. Litigation on sales and marketing of the Apple Watch, including consumer surveys and marketing analyses. Likewise, Apple’s financial



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productions in the C.D. Cal. Litigation included sales data through Q1 of Apple’s fiscal year 2023 for Apple Watch Series 0 through Series 7, line of business reports for all Apple Watches through Q2 of Apple’s fiscal year 2022, and Apple Watch bills of materials.

11. Trial on Masimo’s misappropriation claims began on April 4, 2023. C.D. Cal. Litigation, D.I. 1538. On April 25, 2023, the Court granted Apple’s Fed. R. Civ. P. 50(a) motion for judgment as a matter of law on Masimo’s business strategy trade secret misappropriation claims, and then issued a final order to that effect on May 4, 2023. *Id.*, D.I. 1724 at 4-7. The remaining claims, including Masimo’s misappropriation claim with respect to alleged technical trade secrets, went to the jury. After approximately three days of deliberations, six of the seven jurors reported in a jury note that they favored a verdict for Apple. *Id.*, D.I. 1713. Because the jury was unable to reach a unanimous verdict, the Court declared a mistrial. *Id.*, D.I. 1711. The parties’ post-trial motions under Fed. R. Civ. P. 50(b) and 52 are fully briefed, and a hearing is scheduled for July 31, 2023. *Id.*, D.I. 1881.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 26th day of July 2023.

By: /s/ Mark D. Selwyn  
Mark D. Selwyn

# Exhibit 1

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Attorneys for Plaintiffs,  
Masimo Corporation and Cercacor Laboratories, Inc.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

MASIMO CORPORATION,  
a Delaware corporation; and  
CERCACOR LABORATORIES, INC.,  
a Delaware corporation

Plaintiffs,

v.

APPLE INC., a California corporation

Defendant.

) Case No. 8:20-cv-00048-JVS-JDE  
)  
) **FOURTH AMENDED**  
) **COMPLAINT FOR**  
) **(1) PATENT INFRINGEMENT**  
) **(2) TRADE SECRET**  
) **MISAPPROPRIATION**  
) **(3) CORRECTION OF**  
) **INVENTORSHIP AND**  
) **(4) OWNERSHIP OF PATENTS**  
) **DEMAND FOR JURY TRIAL**  
) Hon. James V. Selna

**REDACTED VERSION OF DOCUMENT  
PROPOSED TO BE FILED UNDER SEAL**

1           Plaintiffs MASIMO CORPORATION (“Masimo”) and CERCACOR  
2   LABORATIES, INC. (“Cercacor”) hereby complain of Defendant APPLE INC.  
3   (“Apple”), and allege as follows:

4                           **I. THE PARTIES**

5           1.     Plaintiff Masimo is a Delaware corporation having its principal  
6   place of business at 52 Discovery, Irvine, California 92618.

7           2.     Plaintiff Cercacor is a Delaware corporation having its principal  
8   place of business at 15750 Alton Pkwy, Irvine, California 92618.

9           3.     Upon information and belief, Defendant Apple is a California  
10   corporation having a principal place of business at One Apple Park Way,  
11   Cupertino, California, 95014.

12                           **II. JURISDICTION AND VENUE**

13           4.     This civil action includes claims for patent infringement arising  
14   under the patent laws of the United States, 35 U.S.C. §§ 100, *et seq.*, more  
15   particularly, 35 U.S.C. §§ 271 and 281. This civil action includes claims for  
16   correction of inventorship of certain United States patents arising under the  
17   patent law of the United States, more particularly 35 U.S.C. § 256. This  
18   Complaint further alleges trade secret misappropriation and seeks a declaration  
19   of ownership of certain patents and patent applications.

20           5.     This Court has subject matter jurisdiction over claims 1-12 and 14-  
21   18 pursuant to at least 28 U.S.C. §§ 1331 and 1338(a), and has at least  
22   supplemental jurisdiction over claims 13 and 19-27 pursuant to at least 28  
23   U.S.C. §§ 1367(a), including because, as alleged in more detail below, they are  
24   sufficiently related to the claims over which this Court has original jurisdiction  
25   that they form part of the same case or controversy under Article III of the  
26   United States Constitution.

1           6. Apple has its principal place of business in California. Apple is  
2 subject to personal jurisdiction in California and has committed the acts  
3 complained of in this Judicial District.

4           7. Venue is proper in the Southern Division of the Central District of  
5 California pursuant to 28 U.S.C. § 1400(b) with respect to patent infringement  
6 because Defendant has a regular and established place of business in the County  
7 of Orange within the Central District of California and committed acts of  
8 infringement in this Judicial District. Defendant also committed acts of  
9 misappropriation in this Judicial District. Inventive contributions to the patents  
10 and patent application as to which Plaintiffs seek correction of inventorship  
11 and/or declarations of ownership also took place in this Judicial District. Thus,  
12 venue is proper pursuant to 28 U.S.C. §§ 1391(b) because a substantial part of  
13 the events or omissions giving rise to the claims occurred in this Judicial  
14 District.

15                           **III. STATEMENT OF THE CASE**

16           8. This action seeks relief for the theft of Plaintiffs' highly  
17 confidential information and trade secrets, and infringement of Masimo's  
18 patents by Defendant, correction of inventorship, and ownership of patents  
19 assigned to or filed by Apple on subject matter that belongs to Plaintiffs.

20                           **IV. STATEMENT OF FACTS**

21           9. Masimo is a medical technology company that revolutionized non-  
22 invasive monitoring of physiological parameters, such as pulse rate, arterial  
23 oxygen saturation and many others.

24           10. Most of these parameters are measured using light that is  
25 transmitted through the body tissue. The received light, that has been attenuated  
26 by the various components of the body tissue, including the blood, is known in  
27 the industry as a photoplethysmograph or "PPG." The transmission and receipt  
28

1 of this light is typically accomplished through a sensor that is applied to a body  
2 part such as a finger, arm, toe, forehead or ear.

3 11. Before Masimo, non-invasive measurements from the PPG were  
4 plagued by unreliability, often when the measurement was needed most, due to  
5 the person moving or having low peripheral blood flow (known as “low  
6 perfusion”). The industry had essentially given up on solving these problems,  
7 concluding they were largely unsolvable. In the medical context, clinicians had  
8 to live with the results – patient monitors gave excessive false alarms, froze  
9 their measurements for prolonged periods of time despite potential changes in  
10 the physiological parameter (e.g., oxygen saturation or pulse rate), delayed  
11 notification of alarms due to long averaging times of sensor data, produced  
12 inaccurate measurements, or were unable to obtain data on the most critical  
13 patients and babies who cannot be instructed to stay still. Masimo’s pioneering  
14 technology, known as Masimo Signal Extraction Technology (“Masimo SET”),  
15 solved this problem and dramatically improved the reliability of monitoring and  
16 reporting physiological signals derived from the PPG.

17 12. Following its initial success with Masimo SET, Masimo invested  
18 heavily in developing additional breakthrough measurement technologies, such  
19 as non-invasively measuring total hemoglobin, carboxyhemoglobin, and  
20 methemoglobin. Masimo has continued to innovate, succeeding where others  
21 have consistently failed. Masimo was the first, and remains the only, company  
22 delivering these game-changing technologies to hospitals in the United States.  
23 Use of Masimo’s technology in the clinical setting has been proven to reduce  
24 blindness in premature infants, detect congenital heart disease in infants, save  
25 lives on the general care floor and post-surgery, and improve transfusion  
26 management, while saving money.

27 13. From its inception, Masimo has continuously developed cutting-  
28 edge noninvasive patient monitoring technologies. Masimo sought and received

1 numerous U.S. patents for many of its inventions. Masimo's revolutionary  
2 technology was a key to its gaining significant market praise and penetration.  
3 After introduction into the market, many competitors, much larger than  
4 Masimo, used Masimo's technology without a license, resulting in patent  
5 infringement lawsuits that ultimately confirmed the validity of Masimo's  
6 innovations. Masimo also maintains some technology as trade secrets. Masimo  
7 also closely guards its future product and market plans. Only select employees  
8 have knowledge of and access to these guarded secrets.

9 14. Masimo's innovations also include important advances in sensor  
10 technologies that work together as part of Masimo's system and algorithms.  
11 Masimo's sensors are integral to the success of the revolutionary technologies  
12 Masimo has developed.

13 15. In 1998, Masimo spun certain technologies off into a new  
14 company, Masimo Laboratories, Inc. or "Masimo Labs," to further research and  
15 develop the technologies. The name of the company was later changed to  
16 Cercacor Laboratories Inc. or "Cercacor." Cercacor and Masimo have a cross-  
17 license agreement to facilitate confidential collaboration between the  
18 companies. Cercacor is not owned by Masimo.

19 16. Like Masimo, Cercacor is an innovator of non-invasive monitoring  
20 technologies. Cercacor is on the frontline of understanding how measuring,  
21 tracking, and analyzing physiological parameters can impact pre-diabetic and  
22 diabetic patients, sports training and performance and overall health and  
23 wellness principally in the consumer market. Cercacor continued the  
24 development that started at Masimo on non-invasive total hemoglobin (SpHb®),  
25 methemoglobin (SpMet®), and carboxyhemoglobin (SpCO®) and other non-  
26 invasive physiological parameters.

27 17. Leading hospitals around the world use Cercacor technology  
28 licensed to Masimo and sold under the name Masimo rainbow SET. Like

1 Masimo, Cercacor also maintains some technology as trade secrets, and  
2 Cercacor closely guards its future product and market plans. Only select  
3 employees have knowledge of and access to these guarded secrets.

4 18. Plaintiffs carefully guard the secrecy of their confidential  
5 information and documents. For example, Plaintiffs have policies regarding  
6 labeling confidential information and documents as “CONFIDENTIAL AND  
7 PROPRIETARY.” They also restrict these documents and information from  
8 disclosure to third parties and employees on a need-to-know basis. Plaintiffs  
9 also have policies in place regarding the use of computers and related equipment  
10 that govern how their computer systems may be used. Those policies also  
11 govern the protection of Plaintiffs’ confidential information. Plaintiffs have  
12 document management systems that restrict access to confidential documents to  
13 only those employees with proper security credentials and a need for access.  
14 Plaintiffs also require employees to sign agreements precluding the employees  
15 from disclosing or making use of any confidential information except as  
16 authorized by Plaintiffs and as necessary for the performance of the employees’  
17 duties. Plaintiffs also require third parties, including customers, to execute  
18 confidential non-disclosure agreements. Plaintiffs implemented such policies  
19 and procedures to maintain the confidentiality of sensitive information. These  
20 policies remain in place today.

21 19. In 2013, Apple contacted Masimo and asked to meet regarding a  
22 potential collaboration. Apple told Masimo that Apple would like to understand  
23 more about Masimo’s technology to potentially integrate that technology into  
24 Apple’s products. Apple and Masimo later entered into a confidentiality  
25 agreement, and Masimo’s management met with Apple. The meetings included  
26 confidential discussions of Masimo’s technology. After what seemed to  
27 Masimo to have been productive meetings, Apple quickly began trying to hire  
28 Masimo employees, including engineers and key management.



1           20. Masimo employed Michael O'Reilly as its Chief Medical Officer  
2 and Executive Vice President for Medical Affairs beginning in January 2008.  
3 As part of the Masimo executive team, O'Reilly was privy to extremely  
4 sensitive information, including information about mobile medical products and  
5 applications, wellness applications, clinical data gathering and analytics, and  
6 other technology of Masimo. Upon information and belief, Apple employed  
7 O'Reilly in July 2013, shortly after the meetings with Masimo, to assist in  
8 wellness and mobile applications that include non-invasive measurement of  
9 physiological parameters. Not long after, by December of 2013, O'Reilly was  
10 already meeting with the FDA on behalf of Apple to discuss medical  
11 applications and discuss medical products that non-invasively measures blood  
12 constituents.

13           21. Apple systematically recruited other key Masimo personnel, such  
14 as Marcelo Lamego, who was the former Chief Technical Officer of Cercacor  
15 and a former Research Scientist at Masimo. Lamego was a Masimo employee  
16 during 2000-2001 and 2003-2006, and the Cercacor Chief Technical Officer  
17 during 2006-2014.

18           22. Lamego had unfettered access to Plaintiffs' highly confidential  
19 technical information. He was trained and mentored at Masimo by the most  
20 skilled engineers and scientists, and was taught about the keys to effective non-  
21 invasive monitoring, something he was not involved in prior to Masimo.  
22 Masimo engineers and scientists taught Lamego about non-invasive monitoring,  
23 including, among others, Ammar Al-Ali, Mohamed Diab, and Walter Weber.  
24 The Masimo engineers, including Al-Ali, Diab, and Weber, were Masimo  
25 employees at all relevant times. Lamego also had access to and learned  
26 guarded secrets regarding Plaintiffs' mobile medical products, including key  
27 technology and advance plans for future products.  
28

1           23. When Lamego left Cercacor, he assured Plaintiffs that he would  
2 not violate his agreements with Plaintiffs and volunteered that he would not  
3 work on technology similar to Plaintiffs' technology. On January 24, 2014,  
4 Plaintiffs sent a letter to Defendant explaining that Lamego possessed Plaintiffs'  
5 confidential proprietary information and warning Apple to respect Plaintiffs'  
6 rights in such information. The letter stated "we trust that Apple will employ  
7 Mr. Lamego in an area that does not involve healthcare technology, including  
8 mobile health applications and the measurement of physiological information."  
9 The letter also asked that "Apple refrain from inducing Mr. Lamego to take  
10 actions that would violate the Agreement while he performs services for Apple"  
11 and asked Apple to "direct Mr. Lamego to honor his obligations to all of his  
12 prior employers." Based on Plaintiffs' conversations with Lamego, Plaintiffs'  
13 letter to Apple, and Plaintiffs' confidentiality agreement with Apple, Plaintiffs  
14 reasonably believed that Lamego would not use or disclose Plaintiffs'  
15 confidential information and that Defendant would not induce Lamego to do so  
16 or itself use Plaintiffs' confidential information.

17           24. Unbeknownst to Plaintiffs at the time, it now appears that, shortly  
18 after joining Apple in January 2014, Lamego began pursuing on behalf of Apple  
19 numerous patent applications directed toward technologies he worked on at  
20 Plaintiffs, and with which he had no prior experience or knowledge.

21           25. Upon information and belief, Apple announced the first version of  
22 its watch in September 2014, and began shipping its watch in April 2015. The  
23 Apple Watch Series 3 was released on September 22, 2017, and upon  
24 information and belief had significant performance issues with the non-invasive  
25 physiological measurements. Apple announced the Apple Watch Series 4 on  
26 September 12, 2018, and upon information and belief, that watch includes  
27 technology that tracks Plaintiffs' technologies to solve some of the performance  
28 issues. The Apple Watch Series 5 was announced on September 10, 2019 and

1 released on September 20, 2019. Upon information and belief, the Apple Watch  
2 Series 5 also includes Plaintiffs' technologies to solve some of the prior  
3 performance issues, including technology as to which Lamego was an inventor  
4 while at Plaintiffs. The Apple Watch Series 6 and Series SE were announced on  
5 September 15, 2020, and released on September 18, 2020. Upon information  
6 and belief, the Apple Watch Series 6 and Series SE also includes Plaintiffs'  
7 technologies to solve some of the prior performance issues, including  
8 technology as to which Lamego was an inventor while at Plaintiffs.

9 26. As set forth in detail below, and on information and belief, each  
10 portion of evidence cited by Plaintiffs, such as the selected portions of Apple  
11 patent applications and Apple websites, accurately portrays, in relevant part, the  
12 structure, design, function and/or operation of the Apple Watch devices.

### 13 **V. THE PATENTS-IN-SUIT**

14 27. Masimo is the owner by assignment of U.S. Patent No. 10,258,265  
15 entitled "Multi-stream data collection system for noninvasive measurement of  
16 blood constituents" ("the '265 patent"), which the United States Patent and  
17 Trademark Office lawfully and duly issued on April 16, 2019.

18 28. Masimo is the owner by assignment of U.S. Patent No. 10,292,628  
19 entitled "Multi-stream data collection system for noninvasive measurement of  
20 blood constituents" ("the '628 patent"), which the United States Patent and  
21 Trademark Office lawfully and duly issued on May 21, 2019.

22 29. Masimo is the owner by assignment of U.S. Patent No. 10,588,553  
23 entitled "Multi-Stream Data Collection System For Noninvasive Measurement  
24 of Blood Constituents" ("the '553 patent"), which the United States Patent and  
25 Trademark Office lawfully and duly issued on March 17, 2020.

26 30. Masimo is the owner by assignment of U.S. Patent No. 10,588,554  
27 entitled "Multi-Stream Data Collection System For Noninvasive Measurement  
28

1 of Blood Constituents” (“the ’554 patent”), which the United States Patent and  
2 Trademark Office lawfully and duly issued on March 17, 2020.

3 31. Masimo is the owner by assignment of U.S. Patent No. 10,624,564  
4 entitled “Multi-Stream Data Collection System For Noninvasive Measurement  
5 of Blood Constituents” (“the ’564 patent”), which the United States Patent and  
6 Trademark Office lawfully and duly issued on April 21, 2020.

7 32. Masimo is the owner by assignment of U.S. Patent No. 10,631,765  
8 entitled “Multi-Stream Data Collection System For Noninvasive Measurement  
9 of Blood Constituents” (“the ’765 patent”), which the United States Patent and  
10 Trademark Office lawfully and duly issued on April 28, 2020.

11 33. Masimo is the owner by assignment of U.S. Patent No. 10,702,194  
12 entitled “Multi-Stream Data Collection System For Noninvasive Measurement  
13 of Blood Constituents” (“the ’194 patent”), which the United States Patent and  
14 Trademark Office lawfully and duly issued on July 7, 2020.

15 34. Masimo is the owner by assignment of U.S. Patent No. 10,702,195  
16 entitled “Multi-Stream Data Collection System For Noninvasive Measurement  
17 of Blood Constituents” (“the ’195 patent”), which the United States Patent and  
18 Trademark Office lawfully and duly issued on July 7, 2020.

19 35. Masimo is the owner by assignment of U.S. Patent No. 10,709,366  
20 entitled “Multi-Stream Data Collection System For Noninvasive Measurement  
21 of Blood Constituents” (“the ’366 patent”), which the United States Patent and  
22 Trademark Office lawfully and duly issued on July 14, 2020.

23 36. Masimo is the owner by assignment of U.S. Patent No. 6,771,994  
24 entitled “Pulse oximeter probe-off detection system” (“the ’994 patent”), which  
25 the United States Patent and Trademark Office lawfully and duly issued on  
26 August 3, 2004.

1 37. Masimo is the owner by assignment of U.S. Patent No. 8,457,703  
2 entitled "Low power pulse oximeter" ("the '703 patent"), which the United  
3 States Patent and Trademark Office lawfully and duly issued on June 4, 2013.

4 38. Masimo is the owner by assignment of U.S. Patent No. 10,433,776  
5 entitled "Low power pulse oximeter" ("the '776 patent"), which the United  
6 States Patent and Trademark Office lawfully and duly issued on October 8,  
7 2019.

8 **VI. PLAINTIFFS' TRADE SECRETS**

9 39. Plaintiffs allege Apple misappropriated the following specific trade  
10 secrets discussed in Paragraphs 40-45 below.

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

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Rank	Country	Percentage
1	United States	85%
2	Germany	75%
3	France	70%
4	United Kingdom	65%
5	Italy	60%
6	Spain	55%
7	Japan	50%
8	Canada	45%
9	Australia	40%
10	Sweden	35%
11	Netherlands	30%
12	Belgium	25%
13	Switzerland	20%
14	Austria	15%
15	Denmark	10%
16	Finland	5%
17	Portugal	4%
18	Greece	3%
19	Ireland	2%
20	Poland	1%
21	Czech Republic	0.5%
22	Slovakia	0.5%
23	Hungary	0.5%
24	Slovenia	0.5%
25	Croatia	0.5%
26	Bulgaria	0.5%
27	Romania	0.5%



[REDACTED]

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18 [REDACTED]

19 46. The aforementioned information in Paragraphs 40-45 is referred to  
20 herein as Plaintiffs' "Confidential Information."

21 **VII. THE DISPUTED LAMEGO PATENTS**

22 47. Lamego is named as an inventor on U.S. Provisional Patent  
23 Application No. 62/043,294, filed Aug. 28, 2014 and titled "Reflective Surface  
24 Treatments for Optical Sensors." Related applications that also name Lamego  
25 as an inventor include U.S Patent Application Nos. 14/740,196 and 16/114,003,  
26 which issued as U.S. Patent Nos. 10,078,052 and 10,247,670.

27 48. Lamego is also named as an inventor on U.S. Provisional Patent  
28 Application No. 62/047,818, filed Sep. 9, 2014, entitled "Modulation and

1 Demodulation Techniques for a Health Monitoring System.” A related  
2 application that names Lamego as the sole inventor includes U.S. Patent  
3 Application No. 14/621,268, which issued as U.S. Patent No. 10,219,754.

4 49. Lamego is also named as an inventor on U.S. Provisional Patent  
5 Application No. 62/056,299, filed on Sep. 26, 2014, and entitled “Electronic  
6 Device that Computes Health Data.” Related applications that also name  
7 Lamego as the sole inventor include U.S. Patent Application Nos. 14/617,422,  
8 15/667,832, and 16/700,710. The ’422 Application issued as U.S. Patent No.  
9 9,723,997 and the ’832 Application issued as U.S. Patent No. 10,524,671.

10 50. Lamego is also named as an inventor on U.S. Provisional Patent  
11 Application No. 62/057,089, filed on Sep. 29, 2014, and entitled “Methods and  
12 Systems for Modulation and Demodulation of Optical Signals.” Related  
13 applications that also name Lamego as an inventor include U.S. Patent  
14 Application Nos. 14/618,664 and 15/960,507. The ’664 Application issued as  
15 U.S. Patent No. 9,952,095.

16 **VIII. FIRST CAUSE OF ACTION**

17 **(INFRINGEMENT OF U.S. PATENT NO. 10,258,265)**

18 51. Plaintiff Masimo hereby realleges and incorporates by reference  
19 the allegations set forth in paragraphs 1 through 50.

20 52. Upon information and belief, Defendant’s products, including at  
21 least the Apple Watch Series 4 and later devices, infringe at least Claims 1-3, 6-  
22 11, 13, 16-25 of the ’265 patent under at least 35 U.S.C. § 271(a), (b), and (c).

23 53. Upon information and belief, Defendant has directly infringed one  
24 or more claims of the ’265 patent through manufacture, use, sale, offer for sale,  
25 and/or importation into the United States of physiological monitors, including  
26 the Apple Watch Series 4 and later devices.

27 54. For example, upon information and belief, in operation, the Apple  
28 Watch Series 4 and later devices include all of the limitations of Claim 1 of the

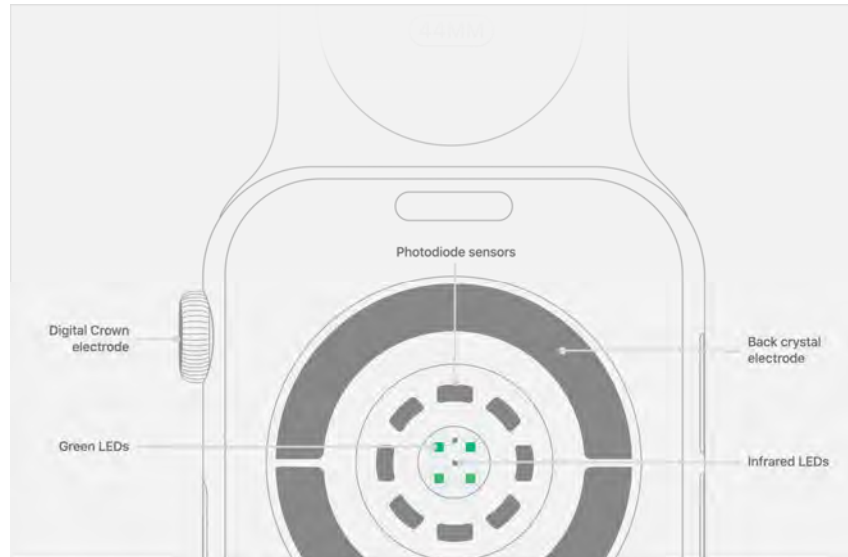


'265 patent as set forth herein and further illustrated in the claim chart shown in Exhibit 1. The Apple Watch Series 4 and later devices are adapted to be worn by a wearer and provide an indication of a physiological parameter (for example, heart rate) of the wearer as shown in the image below found on the Apple website at <https://www.apple.com/apple-watch-series-4/health/>:



Upon information and belief, relevant technology in the Apple Watch Series 4 and later devices is described in International Application Publication WO 2018/226305 (the '305 publication). For example, the Apple Watch Series 4 and later devices provide an indication of a physiological parameter of the wearer as described in the '305 publication at paragraphs [0055]-[0061].

55. The Apple Watch Series 4 and later devices include a plurality of emitters of different wavelengths (for example, green and infrared LEDs) and at least four detectors (for example, photodiode sensors) spaced apart from each other as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



56. The detectors output signals responsive to light from the light emitters attenuated by body tissue. Upon information and belief, the signals are indicative of a physiological parameter (for example, heart rate) of the wearer.

57. Upon information and belief, relevant technology in the Apple Watch Series 4 and later devices is described in the below citation to U.S. Patent Application Publication 2019/0072912 (the '912 publication). The Apple Watch Series 4 and later devices include a housing having a surface and a circular wall protruding from the surface, and a light permeable cover arranged above a portion of the housing and covering the detectors. Fig. 4C and the corresponding text of the '912 publication show, for example, such housing:

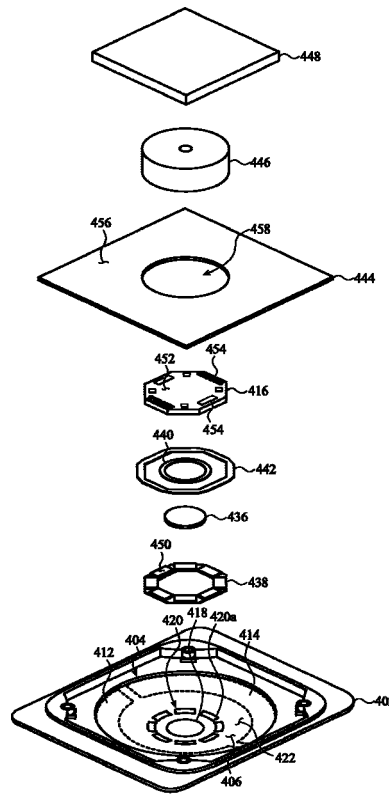


FIG. 4C

58. Upon information and belief, Defendant has knowledge of Masimo's patents, including the '265 patent, at least based on O'Reilly and Lamego's former positions with Plaintiffs. Masimo filed provisional patent applications that led to the '265 patent in August 2008, while O'Reilly and Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of the '265 patent. Defendant had knowledge of the '265 patent no later than the filing of the original Complaint.

59. Upon information and belief, Defendant has actively induced others to infringe the '265 patent by marketing and selling the above Apple Watch Series 4 and later devices, knowing and intending that such systems would be used by customers and end users in a manner that infringes the '265 patent. To that end, Defendant provides instructions and teachings to its customers and end users that such Apple Watch Series 4 and later devices be

1 used to infringe the '265 patent. Defendant's acts constitute infringement of the  
2 '265 patent in violation of 35 U.S.C. § 271(b).

3 60. Upon information and belief, Defendant actively induces users to  
4 directly infringe the asserted claims of the '265 patent. By way of example  
5 only, upon information and belief, Defendant actively induces direct  
6 infringement of the '265 patent by providing directions, demonstrations, guides,  
7 manuals, training for use, and/or other materials necessary for the use of the  
8 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
9 Upon information and belief, Defendant knew or should have known that these  
10 activities would cause direct infringement.

11 61. Upon information and belief, Defendant's acts constitute  
12 contributory infringement of the '265 patent in violation of 35 U.S.C. § 271(c).  
13 Upon information and belief, Defendant contributorily infringes because, among  
14 other things, Defendant offers to sell and/or sells within the United States,  
15 and/or imports into the United States, components of the Apple Watch Series 4  
16 and later devices and Apple iPhones that constitute material parts of the  
17 invention of the asserted claims of the '265 patent, are not staple articles or  
18 commodities of commerce suitable for substantial non-infringing use and are  
19 known by Defendant to be especially made or especially adapted for use in an  
20 infringement of the '265 patent.

21 62. Defendant's infringement of the '265 patent is willful, deliberate,  
22 and intentional by continuing its acts of infringement after becoming aware of  
23 the '265 patent and its infringement thereof, thus acting in reckless disregard of  
24 Masimo's patent rights.

25 63. Because of Defendant's infringement of the '265 patent, Masimo  
26 has suffered and will continue to suffer irreparable harm and injury, including  
27 monetary damages in an amount to be determined at trial.  
28

1           64. Upon information and belief, unless enjoined, Defendant, and/or  
2 others acting on behalf of Defendant, will continue their infringing acts, thereby  
3 causing additional irreparable injury to Masimo for which there is no adequate  
4 remedy at law.

5                           **IX. SECOND CAUSE OF ACTION**

6                           **(INFRINGEMENT OF U.S. PATENT NO. 10,292,628)**

7           65. Plaintiff Masimo hereby realleges and incorporates by reference  
8 the allegations set forth in paragraphs 1 through 50.

9           66. Upon information and belief, Defendant's products, including at  
10 least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the  
11 '628 patent under at least 35 U.S.C. § 271(a), (b), and (c).

12           67. Upon information and belief, Defendant has directly infringed one  
13 or more claims of the '628 patent through manufacture, use, sale, offer for sale,  
14 and/or importation into the United States of physiological monitors, including  
15 the Apple Watch Series 4 and later devices.

16           68. For example, upon information and belief, in operation, the Apple  
17 Watch Series 4 and later devices include all of the limitations of Claim 1 of the  
18 '628 patent as set forth herein and further illustrated in the claim chart shown in  
19 Exhibit 1.

20           69. The Apple Watch Series 4 and later devices include a housing  
21 configured to house a plurality of detectors. Fig. 4C and the corresponding text  
22 of the '912 publication show, for example, such housing:  
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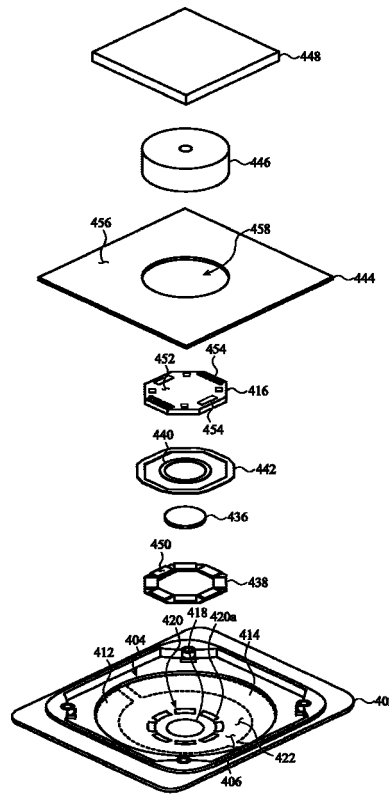


FIG. 4C

70. The Apple Watch Series 4 and later devices include a plurality of emitters that emit light into tissue of a user and a plurality of detectors that detect light that has been attenuated by tissue of the user as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



71. The Apple Watch Series 4 and later devices include a light permeable cover configured to be located between tissue of the user and the plurality of detectors when the noninvasive optical physiological sensor is worn by the user, wherein the cover comprises an outwardly protruding convex surface configured to cause tissue of the user to conform to at least a portion of the outwardly protruding convex surface when the noninvasive optical physiological sensor is worn by the user and during operation of the noninvasive optical physiological sensor, and wherein the plurality of detectors are configured to receive light passed through the outwardly protruding convex surface after attenuation by tissue of the user. Fig. 4C and the corresponding text of the '912 publication show, for example, such cover:

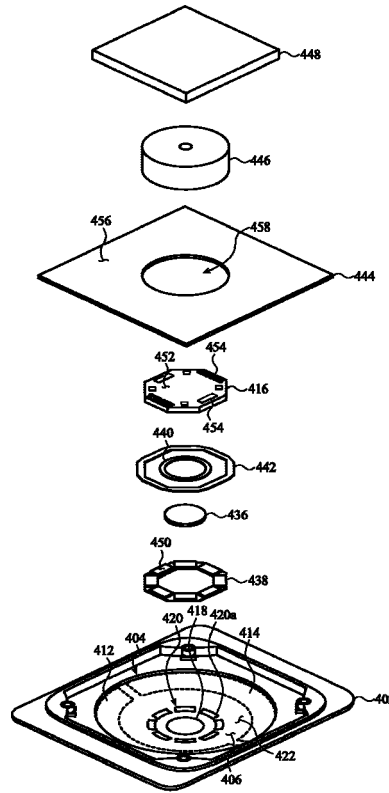


FIG. 4C

72. Upon information and belief, Defendant has knowledge of Masimo's patents, including the '628 patent, at least based on O'Reilly and Lamego's former positions with Plaintiffs. Masimo filed provisional patent applications that led to the '628 patent in August 2008, while O'Reilly and Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of the '628 patent. Defendant had knowledge of the '628 patent no later than the filing of the original Complaint.

73. Upon information and belief, Defendant has actively induced others to infringe the '628 patent by marketing and selling the above Apple Watch Series 4 and later devices, knowing and intending that such systems would be used by customers and end users in a manner that infringes the '628 patent. To that end, Defendant provides instructions and teachings to its customers and end users that such Apple Watch Series 4 and later devices be



1 used to infringe the '628 patent. Defendant's acts constitute infringement of the  
2 '628 patent in violation of 35 U.S.C. § 271(b).

3 74. Upon information and belief, Defendant actively induces users to  
4 directly infringe the asserted claims of the '628 patent. By way of example  
5 only, upon information and belief, Defendant actively induces direct  
6 infringement of the '628 patent by providing directions, demonstrations, guides,  
7 manuals, training for use, and/or other materials necessary for the use of the  
8 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
9 Upon information and belief, Defendant knew or should have known that these  
10 activities would cause direct infringement.

11 75. Upon information and belief, Defendant's acts constitute  
12 contributory infringement of the '628 patent in violation of 35 U.S.C. § 271(c).  
13 Upon information and belief, Defendant contributorily infringes because, among  
14 other things, Defendant offers to sell and/or sells within the United States,  
15 and/or imports into the United States, components of the Apple Watch Series 4  
16 and later devices and Apple iPhones that constitute material parts of the  
17 invention of the asserted claims of the '628 patent, are not staple articles or  
18 commodities of commerce suitable for substantial non-infringing use, and are  
19 known by Defendant to be especially made or especially adapted for use in an  
20 infringement of the '628 patent.

21 76. Defendant's infringement of the '628 patent is willful, deliberate,  
22 and intentional by continuing its acts of infringement after becoming aware of  
23 the '628 patent and its infringement thereof, thus acting in reckless disregard of  
24 Masimo's patent rights.

25 77. Because of Defendant's infringement of the '628 patent, Masimo  
26 has suffered and will continue to suffer irreparable harm and injury, including  
27 monetary damages in an amount to be determined at trial.  
28

1           78. Upon information and belief, unless enjoined, Defendant, and/or  
2 others acting on behalf of Defendant, will continue their infringing acts, thereby  
3 causing additional irreparable injury to Masimo for which there is no adequate  
4 remedy at law.

5                           **X. THIRD CAUSE OF ACTION**

6                           **(INFRINGEMENT OF U.S. PATENT NO. 10,588,553)**

7           79. Plaintiff Masimo hereby realleges and incorporates by reference  
8 the allegations set forth in paragraphs 1 through 50.

9           80. Upon information and belief, Defendant's products, including at  
10 least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the  
11 '553 patent under at least 35 U.S.C. § 271(a), (b), and (c).

12           81. Upon information and belief, Defendant has directly infringed one  
13 or more claims of the '553 patent through manufacture, use, sale, offer for sale,  
14 and/or importation into the United States of physiological monitors, including  
15 the Apple Watch Series 4 and later devices.

16           82. For example, upon information and belief, in operation, the Apple  
17 Watch Series 4 and later devices include all of the limitations of Claim 1 of the  
18 '553 patent as set forth herein and further illustrated in the claim chart shown in  
19 Exhibit 1. The Apple Watch Series 4 and later devices are noninvasive optical  
20 physiological sensor devices as shown in the image below found on the Apple  
21 website at <https://www.apple.com/apple-watch-series-4/health/>:  
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83. The Apple Watch Series 4 and later devices include a plurality of emitters configured to emit light into tissue of a user, and at least four detectors, wherein at least one of the at least four detectors is configured to detect light that has been attenuated by tissue of the user, and wherein the at least four detectors are arranged on a substrate as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



84. The detectors output signals responsive to light from the light emitters attenuated by body tissue. Upon information and belief, the signals are indicative of a physiological parameter (for example, heart rate) of the wearer.

85. Upon information and belief, relevant technology in the Apple Watch Series 4 and later devices is described in the below citation to U.S. Patent Application Publication 2019/0072912 (the '912 publication). The Apple Watch Series 4 and later devices include a wall configured to circumscribe at least the at least four detectors and a cover configured to be located between tissue of the user and the at least four detectors when the noninvasive optical physiological sensor is worn by the user, wherein the cover comprises a single protruding convex surface operable to conform tissue of the user to at least a portion of the single protruding convex surface when the noninvasive optical physiological sensor is worn by the user, and wherein the wall operably connects to the substrate and the cover. Fig. 4C and the corresponding text of the '912 publication show, for example, such wall and cover:

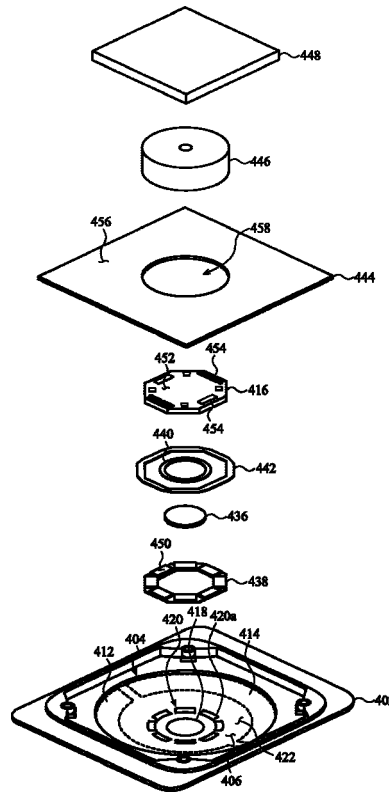


FIG. 4C

1           86. Upon information and belief, Defendant has knowledge of  
2 Masimo's patents, including the '553 patent, at least based on O'Reilly and  
3 Lamego's former positions with Plaintiffs. Masimo filed provisional patent  
4 applications that led to the '553 patent in August 2008, while O'Reilly and  
5 Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of  
6 the '553 patent. Defendant had knowledge of the '553 patent no later than the  
7 filing of the First Amended Complaint.

8           87. Upon information and belief, Defendant has actively induced  
9 others to infringe the '553 patent by marketing and selling the above Apple  
10 Watch Series 4 and later devices, knowing and intending that such systems  
11 would be used by customers and end users in a manner that infringes the  
12 '553 patent. To that end, Defendant provides instructions and teachings to its  
13 customers and end users that such Apple Watch Series 4 and later devices be  
14 used to infringe the '553 patent. Defendant's acts constitute infringement of the  
15 '553 patent in violation of 35 U.S.C. § 271(b).

16           88. Upon information and belief, Defendant actively induces users to  
17 directly infringe the asserted claims of the '553 patent. By way of example  
18 only, upon information and belief, Defendant actively induces direct  
19 infringement of the '553 patent by providing directions, demonstrations, guides,  
20 manuals, training for use, and/or other materials necessary for the use of the  
21 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
22 Upon information and belief, Defendant knew or should have known that these  
23 activities would cause direct infringement.

24           89. Upon information and belief, Defendant's acts constitute  
25 contributory infringement of the '553 patent in violation of 35 U.S.C. § 271(c).  
26 Upon information and belief, Defendant contributorily infringes because, among  
27 other things, Defendant offers to sell and/or sells within the United States,  
28 and/or imports into the United States, components of the Apple Watch Series 4

1 and later devices and Apple iPhones that constitute material parts of the  
2 invention of the asserted claims of the '553 patent, are not staple articles or  
3 commodities of commerce suitable for substantial non-infringing use and are  
4 known by Defendant to be especially made or especially adapted for use in an  
5 infringement of the '553 patent.

6 90. Defendant's infringement of the '553 patent is willful, deliberate,  
7 and intentional by continuing its acts of infringement after becoming aware of  
8 the '553 patent and its infringement thereof, thus acting in reckless disregard of  
9 Masimo's patent rights.

10 91. Because of Defendant's infringement of the '553 patent, Masimo  
11 has suffered and will continue to suffer irreparable harm and injury, including  
12 monetary damages in an amount to be determined at trial.

13 92. Upon information and belief, unless enjoined, Defendant, and/or  
14 others acting on behalf of Defendant, will continue their infringing acts, thereby  
15 causing additional irreparable injury to Masimo for which there is no adequate  
16 remedy at law.

17 **XI. FOURTH CAUSE OF ACTION**

18 **(INFRINGEMENT OF U.S. PATENT NO. 10,588,554)**

19 93. Plaintiff Masimo hereby realleges and incorporates by reference  
20 the allegations set forth in paragraphs 1 through 50.

21 94. Upon information and belief, Defendant's products, including at  
22 least the Apple Watch Series 4 and later devices, infringe at least Claim 20 of  
23 the '554 patent under at least 35 U.S.C. § 271(a), (b), and (c).

24 95. Upon information and belief, Defendant has directly infringed one  
25 or more claims of the '554 patent through manufacture, use, sale, offer for sale,  
26 and/or importation into the United States of physiological monitors, including  
27 the Apple Watch Series 4 and later devices.

1           96. For example, upon information and belief, in operation, the Apple  
2 Watch Series 4 and later devices in combination with iPhone devices include all  
3 of the limitations of Claim 20 of the '554 patent as set forth herein and further  
4 illustrated in the claim chart shown in Exhibit 1. The Apple Watch Series 4 and  
5 later devices combined with Apple iPhones are physiological measurement  
6 systems with physiological sensors as shown in the image below found on the  
7 Apple website at <https://www.apple.com/apple-watch-series-4/health/>:



17           97. The Apple Watch Series 4 and later devices include a plurality of  
18 emitters configured to emit light into tissue of a user, and at least four detectors,  
19 wherein each of the at least four detectors has a corresponding window that  
20 allows light to pass through to the detector as shown in the image below found  
21 on the Apple website at <https://support.apple.com/en-us/HT204666>:

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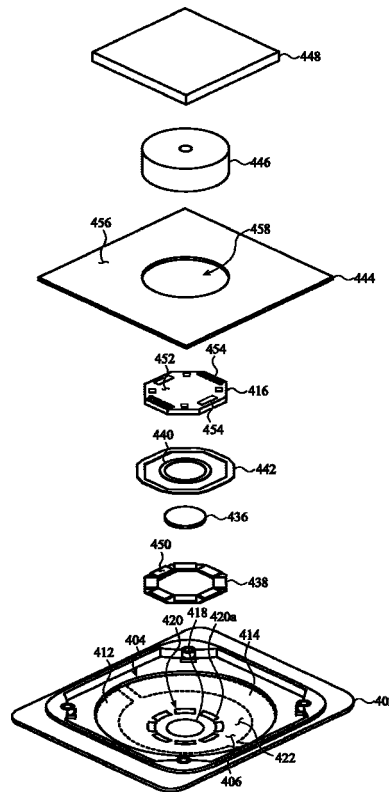


98. The detectors output signals responsive to light from the light emitters attenuated by body tissue. Upon information and belief, the signals are indicative of a physiological parameter (for example, heart rate) of the wearer. Upon information and belief, relevant technology in the Apple Watch Series 4 and later devices is described in International Application Publication WO 2018/226305 (the '305 publication), for example, at paragraphs [0055]-[0061].

99. Upon information and belief, relevant technology in the Apple Watch Series 4 and later devices is described in the below citation to U.S. Patent Application Publication 2019/0072912 (the '912 publication). The Apple Watch Series 4 and later devices include a wall that surrounds at least the at least four detectors, a cover comprising a single protruding convex surface, wherein the single protruding convex surface is configured to be located between tissue of the user and the at least four detectors when the physiological sensor device is worn by the user, wherein at least a portion of the single protruding convex surface is sufficiently rigid to cause tissue of the user to conform to at least a portion of a shape of the single protruding convex surface when the physiological sensor device is worn by the user, and wherein the cover



operably connects to the wall. Fig. 4C and the corresponding text of the '912 publication show, for example, such wall and cover:



**FIG. 4C**

100. The Apple Watch Series 4 and later devices communicate wirelessly with handheld computing devices as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666> and as further described at <https://support.apple.com/en-us/HT204505>:



101. Upon information and belief, Defendant has knowledge of Masimo's patents, including the '554 patent, at least based on O'Reilly and Lamego's former positions with Plaintiffs. Masimo filed provisional patent applications that led to the '554 patent in August 2008, while O'Reilly and Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of the '554 patent. Defendant had knowledge of the '554 patent no later than the filing of the First Amended Complaint.

102. Upon information and belief, Defendant has actively induced others to infringe the '554 patent by marketing and selling the above Apple Watch Series 4 and later devices, knowing and intending that such systems would be used by customers and end users in a manner that infringes the '554 patent. To that end, Defendant provides instructions and teachings to its customers and end users that such Apple Watch Series 4 and later devices be used to infringe the '554 patent. Defendant's acts constitute infringement of the '554 patent in violation of 35 U.S.C. § 271(b).

103. Upon information and belief, Defendant actively induces users to directly infringe the asserted claims of the '554 patent. By way of example only, upon information and belief, Defendant actively induces direct infringement of the '554 patent by providing directions, demonstrations, guides, manuals, training for use, and/or other materials necessary for the use of the

1 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
2 Upon information and belief, Defendant knew or should have known that these  
3 activities would cause direct infringement.

4 104. Upon information and belief, Defendant's acts constitute  
5 contributory infringement of the '554 patent in violation of 35 U.S.C. § 271(c).  
6 Upon information and belief, Defendant contributorily infringes because, among  
7 other things, Defendant offers to sell and/or sells within the United States,  
8 and/or imports into the United States, components of the Apple Watch Series 4  
9 and later devices and Apple iPhones that constitute material parts of the  
10 invention of the asserted claims of the '554 patent, are not staple articles or  
11 commodities of commerce suitable for substantial non-infringing use and are  
12 known by Defendant to be especially made or especially adapted for use in an  
13 infringement of the '554 patent.

14 105. Defendant's infringement of the '554 patent is willful, deliberate,  
15 and intentional by continuing its acts of infringement after becoming aware of  
16 the '554 patent and its infringement thereof, thus acting in reckless disregard of  
17 Masimo's patent rights.

18 106. Because of Defendant's infringement of the '554 patent, Masimo  
19 has suffered and will continue to suffer irreparable harm and injury, including  
20 monetary damages in an amount to be determined at trial.

21 107. Upon information and belief, unless enjoined, Defendant, and/or  
22 others acting on behalf of Defendant, will continue their infringing acts, thereby  
23 causing additional irreparable injury to Masimo for which there is no adequate  
24 remedy at law.

## 25 **XII. FIFTH CAUSE OF ACTION**

### 26 **(INFRINGEMENT OF U.S. PATENT NO. 10,624,564)**

27 108. Plaintiff Masimo hereby realleges and incorporates by reference  
28 the allegations set forth in paragraphs 1 through 50.

109. Upon information and belief, Defendant's products, including at least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the '564 patent under at least 35 U.S.C. § 271(a), (b), and (c).

110. Upon information and belief, Defendant has directly infringed one or more claims of the '564 patent through manufacture, use, sale, offer for sale, and/or importation into the United States of physiological monitors, including the Apple Watch Series 4 and later devices and the iPhone devices.

111. For example, upon information and belief, in operation, the Apple Watch Series 4 and later devices in combination with iPhone devices include all of the limitations of Claim 1 of the '564 patent as set forth herein and further illustrated in the claim chart shown in Exhibit 1. The Apple Watch Series 4 and later devices are user-worn physiological measurement devices as shown in the image below found on the Apple website at <https://www.apple.com/apple-watch-series-4/health/>:



112. The Apple Watch Series 4 and later devices include one or more emitters configured to emit light into tissue of a user and at least four detectors arranged on a substrate as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



113. The detectors output signals responsive to light from the light emitters attenuated by body tissue. Upon information and belief, the signals are indicative of a physiological parameter (for example, heart rate) of the wearer.

114. Upon information and belief, relevant technology in the Apple Watch Series 4 and later devices is described in the below citation to U.S. Patent Application Publication 2019/0072912 (the '912 publication). The Apple Watch Series 4 and later devices include a wall that surrounds at least the at least four detectors and that operably connects to the substrate and a cover comprising a protruding convex surface, wherein the protruding convex surface extends over all of the at least four detectors arranged on the substrate, wherein at least a portion of the protruding convex surface is rigid. Fig. 4C and the corresponding text of the '912 publication show, for example, such wall and cover:

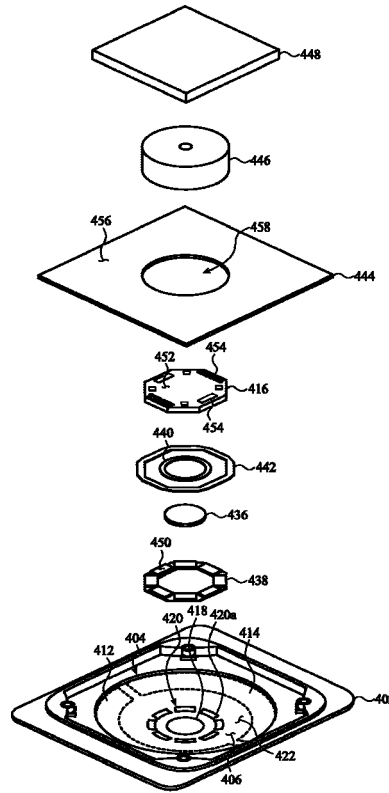


FIG. 4C

115. The Apple Watch Series 4 and later devices include one or more processors configured to receive one or more signals from at least one of the at least four detectors, the one or more signals responsive to at least a physiological parameter of the user; and process the one or more signals to determine measurements of the physiological parameter. Further, the Apple Watch Series 4 and later devices include a network interface configured to communicate with a mobile phone and a touch-screen display configured to provide a user interface where the user interface is configured to display indicia responsive to the measurements of the physiological parameter, a storage device configured to at least temporarily store at least the measurements of the physiological parameter, and a strap configured to position the physiological measurement device on the user as shown in the image below found on the

1 Apple website at <https://support.apple.com/en-us/HT204666> and as further  
2 described at <https://support.apple.com/en-us/HT204505>:



11 116. The Apple Watch Series 4 and later devices have an orientation of  
12 the user interface that is configurable responsive to a user input as described on  
13 the Apple website at [https://support.apple.com/guide/watch/change-language-](https://support.apple.com/guide/watch/change-language-orientation-apple-watch-apd0bf18f46b/watchos)  
14 [orientation-apple-watch-apd0bf18f46b/watchos](https://support.apple.com/guide/watch/change-language-orientation-apple-watch-apd0bf18f46b/watchos).

15 117. Upon information and belief, Defendant has knowledge of  
16 Masimo's patents, including the '564 patent, at least based on O'Reilly and  
17 Lamego's former positions with Plaintiffs. Masimo filed provisional patent  
18 applications that led to the '564 patent in August 2008, while O'Reilly and  
19 Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of  
20 the '564 patent. Defendant had knowledge of the '564 patent no later than the  
21 filing of this Second Amended Complaint.

22 118. Upon information and belief, Defendant has actively induced  
23 others to infringe the '564 patent by marketing and selling the above Apple  
24 Watch Series 4 and later devices, knowing and intending that such systems  
25 would be used by customers and end users in a manner that infringes the  
26 '564 patent. To that end, Defendant provides instructions and teachings to its  
27 customers and end users that such Apple Watch Series 4 and later devices be  
28

1 used to infringe the '564 patent. Defendant's acts constitute infringement of the  
2 '564 patent in violation of 35 U.S.C. § 271(b).

3 119. Upon information and belief, Defendant actively induces users to  
4 directly infringe the asserted claims of the '564 patent. By way of example  
5 only, upon information and belief, Defendant actively induces direct  
6 infringement of the '564 patent by providing directions, demonstrations, guides,  
7 manuals, training for use, and/or other materials necessary for the use of the  
8 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
9 Upon information and belief, Defendant knew or should have known that these  
10 activities would cause direct infringement.

11 120. Upon information and belief, Defendant's acts constitute  
12 contributory infringement of the '564 patent in violation of 35 U.S.C. § 271(c).  
13 Upon information and belief, Defendant contributorily infringes because, among  
14 other things, Defendant offers to sell and/or sells within the United States,  
15 and/or imports into the United States, components of the Apple Watch Series 4  
16 and later devices and Apple iPhones that constitute material parts of the  
17 invention of the asserted claims of the '564 patent, are not staple articles or  
18 commodities of commerce suitable for substantial non-infringing use and are  
19 known by Defendant to be especially made or especially adapted for use in an  
20 infringement of the '564 patent.

21 121. Defendant's infringement of the '564 patent is willful, deliberate,  
22 and intentional by continuing its acts of infringement after becoming aware of  
23 the '564 patent and its infringement thereof, thus acting in reckless disregard of  
24 Masimo's patent rights.

25 122. Because of Defendant's infringement of the '564 patent, Masimo  
26 has suffered and will continue to suffer irreparable harm and injury, including  
27 monetary damages in an amount to be determined at trial.  
28



1           123. Upon information and belief, unless enjoined, Defendant, and/or  
2 others acting on behalf of Defendant, will continue their infringing acts, thereby  
3 causing additional irreparable injury to Masimo for which there is no adequate  
4 remedy at law.

5                           **XIII. SIXTH CAUSE OF ACTION**

6                           **(INFRINGEMENT OF U.S. PATENT NO. 10,631,765)**

7           124. Plaintiff Masimo hereby realleges and incorporates by reference  
8 the allegations set forth in paragraphs 1 through 50.

9           125. Upon information and belief, Defendant's products, including at  
10 least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the  
11 '765 patent under at least 35 U.S.C. § 271(a), (b), and (c).

12           126. Upon information and belief, Defendant has directly infringed one  
13 or more claims of the '765 patent through manufacture, use, sale, offer for sale,  
14 and/or importation into the United States of physiological monitors, including  
15 the Apple Watch Series 4 and later devices and the iPhone devices.

16           127. For example, upon information and belief, in operation, the Apple  
17 Watch Series 4 and later devices in combination with iPhone devices include all  
18 of the limitations of Claim 1 of the '765 patent as set forth herein and further  
19 illustrated in the claim chart shown in Exhibit 1. The Apple Watch Series 4 and  
20 later devices in combination with iPhone devices are physiological measurement  
21 systems with physiological sensors as shown in the image below found on the  
22 Apple website at <https://www.apple.com/apple-watch-series-4/health/>:  
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128. The Apple Watch Series 4 and later devices include one or more emitters configured to emit light into tissue of a user, and at least four detectors, wherein each of the at least four detectors has a corresponding window that allows light to pass through to the detector as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



129. The detectors output signals responsive to light from the light emitters attenuated by body tissue. Upon information and belief, the signals are indicative of a physiological parameter (for example, heart rate) of the wearer.

130. Upon information and belief, relevant technology in the Apple Watch Series 4 and later devices is described in the below citation to U.S. Patent Application Publication 2019/0072912 (the '912 publication). The Apple Watch Series 4 and later devices include a wall that surrounds at least the at least four detectors, a cover comprising a protruding convex surface above the detectors that is sufficiently rigid and operably connects to the wall. Fig. 4C and the corresponding text of the '912 publication show, for example, such wall and cover:

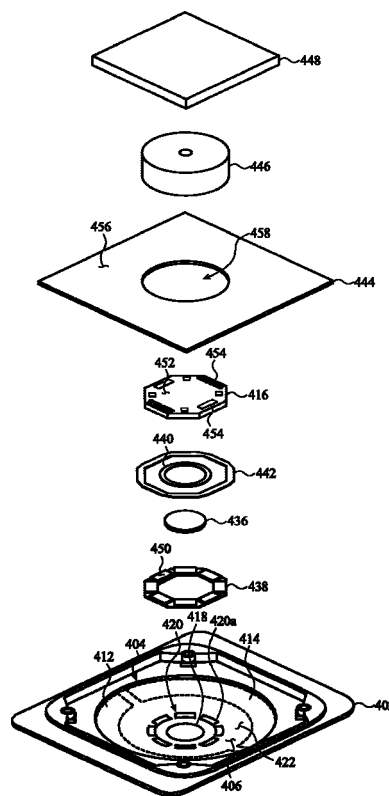


FIG. 4C

131. The Apple Watch Series 4 and later devices include a storage device configured to at least temporarily store at least the measurements of the physiological parameter and communicate wirelessly with iPhone devices that include a touch-screen display configured to provide a user interface to display indicia responsive to measurements of the physiological parameter and one or

1 more processors configured to wirelessly receive one or more signals from the  
2 physiological sensor device, the one or more signals responsive to at least a  
3 physiological parameter of the user, and an orientation of the user interface is  
4 configurable responsive to a user input as shown in the image below found on  
5 the Apple website at <https://support.apple.com/en-us/HT204666> and as further  
6 described at <https://support.apple.com/en-us/HT204505>:



15 132. Upon information and belief, Defendant has knowledge of  
16 Masimo's patents, including the '765 patent, at least based on O'Reilly and  
17 Lamego's former positions with Plaintiffs. Masimo filed provisional patent  
18 applications that led to the '765 patent in August 2008, while O'Reilly and  
19 Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of  
20 the '765 patent. Defendant had knowledge of the '765 patent no later than the  
21 filing of this Second Amended Complaint.

22 133. Upon information and belief, Defendant has actively induced  
23 others to infringe the '765 patent by marketing and selling the above Apple  
24 Watch Series 4 and later devices, knowing and intending that such systems  
25 would be used by customers and end users in a manner that infringes the  
26 '765 patent. To that end, Defendant provides instructions and teachings to its  
27 customers and end users that such Apple Watch Series 4 and later devices be  
28

1 used to infringe the '765 patent. Defendant's acts constitute infringement of the  
2 '765 patent in violation of 35 U.S.C. § 271(b).

3 134. Upon information and belief, Defendant actively induces users to  
4 directly infringe the asserted claims of the '765 patent. By way of example  
5 only, upon information and belief, Defendant actively induces direct  
6 infringement of the '765 patent by providing directions, demonstrations, guides,  
7 manuals, training for use, and/or other materials necessary for the use of the  
8 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
9 Upon information and belief, Defendant knew or should have known that these  
10 activities would cause direct infringement.

11 135. Upon information and belief, Defendant's acts constitute  
12 contributory infringement of the '765 patent in violation of 35 U.S.C. § 271(c).  
13 Upon information and belief, Defendant contributorily infringes because, among  
14 other things, Defendant offers to sell and/or sells within the United States,  
15 and/or imports into the United States, components of the Apple Watch Series 4  
16 and later devices and Apple iPhones that constitute material parts of the  
17 invention of the asserted claims of the '765 patent, are not staple articles or  
18 commodities of commerce suitable for substantial non-infringing use and are  
19 known by Defendant to be especially made or especially adapted for use in an  
20 infringement of the '765 patent.

21 136. Defendant's infringement of the '765 patent is willful, deliberate,  
22 and intentional by continuing its acts of infringement after becoming aware of  
23 the '765 patent and its infringement thereof, thus acting in reckless disregard of  
24 Masimo's patent rights.

25 137. Because of Defendant's infringement of the '765 patent, Masimo  
26 has suffered and will continue to suffer irreparable harm and injury, including  
27 monetary damages in an amount to be determined at trial.  
28

1           138. Upon information and belief, unless enjoined, Defendant, and/or  
2 others acting on behalf of Defendant, will continue their infringing acts, thereby  
3 causing additional irreparable injury to Masimo for which there is no adequate  
4 remedy at law.

5                           **XIV. SEVENTH CAUSE OF ACTION**

6                           **(INFRINGEMENT OF U.S. PATENT NO. 10,702,194)**

7           139. Plaintiff Masimo hereby realleges and incorporates by reference  
8 the allegations set forth in paragraphs 1 through 50.

9           140. Upon information and belief, Defendant's products, including at  
10 least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the  
11 '194 patent under at least 35 U.S.C. § 271(a), (b), and (c).

12           141. Upon information and belief, Defendant has directly infringed one  
13 or more claims of the '194 patent through manufacture, use, sale, offer for sale,  
14 and/or importation into the United States of physiological monitors, including  
15 the Apple Watch Series 4 and later devices.

16           142. For example, upon information and belief, in operation, the Apple  
17 Watch Series 4 and later devices in combination with iPhone devices include all  
18 of the limitations of Claim 1 of the '194 patent as set forth herein and further  
19 illustrated in the claim chart shown in Exhibit 1. The Apple Watch Series 4 and  
20 later devices in combination with iPhone devices are physiological measurement  
21 systems with physiological sensors as shown in the image below found on the  
22 Apple website at <https://www.apple.com/apple-watch-series-4/health/>:  
23  
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143. The Apple Watch Series 4 and later devices include one or more emitters configured to emit light into tissue of a user, and first and second sets of four photodiodes, wherein upon information and belief the photodiodes in each set are connected to one another in parallel to provide a two signal streams each of the at least photodiodes has a corresponding window that allows light to pass through to the photodiode as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



144. The photodiodes output signals responsive to light from the light emitters attenuated by body tissue. Upon information and belief, the signals are



indicative of a physiological parameter (for example, heart rate) of the wearer.

145. Upon information and belief, relevant technology in the Apple Watch Series 4 and later devices is described in the below citation to U.S. Patent Application Publication 2019/0072912 (the '912 publication). The Apple Watch Series 4 and later devices include a wall that surrounds at least the photodiodes, a cover comprising a rigid protruding convex surface above the photodiodes and wall. Fig. 4C and the corresponding text of the '912 publication show, for example, such wall and cover:

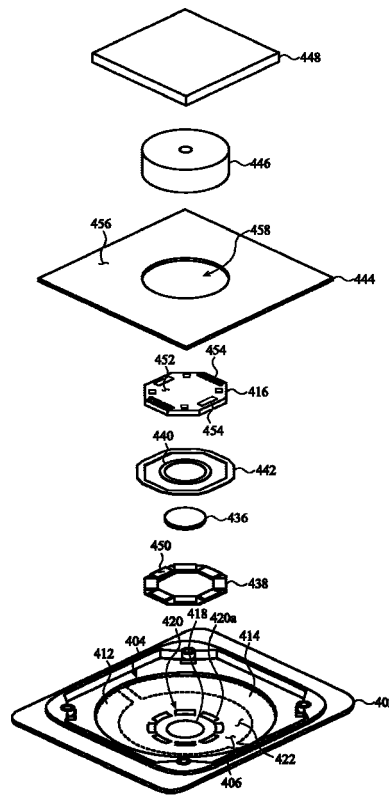


FIG. 4C

146. The Apple Watch Series 4 and later devices include a storage device configured to at least temporarily store at least the measurements of the physiological parameter and communicate wirelessly with iPhone devices that include one or more processors configured to wirelessly receive one or more signals from the physiological sensor device, the one or more signals responsive



1 to at least a physiological parameter of the user, and a touch-screen display  
2 configured to provide a user interface to display indicia responsive to  
3 measurements of the physiological parameter with an orientation of the user  
4 interface configurable as shown in the image below found on the Apple website  
5 at <https://support.apple.com/en-us/HT204666> and as further described at  
6 <https://support.apple.com/en-us/HT204505>:



15 147. Upon information and belief, Defendant has knowledge of  
16 Masimo's patents, including the '194 patent, at least based on O'Reilly and  
17 Lamego's former positions with Plaintiffs. Masimo filed provisional patent  
18 applications that led to the '194 patent in August 2008, while O'Reilly and  
19 Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of  
20 the '194 patent. Defendant had knowledge of the '194 patent no later than the  
21 filing of this Second Amended Complaint.

22 148. Upon information and belief, Defendant has actively induced  
23 others to infringe the '194 patent by marketing and selling the above Apple  
24 Watch Series 4 and later devices, knowing and intending that such systems  
25 would be used by customers and end users in a manner that infringes the  
26 '194 patent. To that end, Defendant provides instructions and teachings to its  
27 customers and end users that such Apple Watch Series 4 and later devices be  
28

1 used to infringe the '194 patent. Defendant's acts constitute infringement of the  
2 '194 patent in violation of 35 U.S.C. § 271(b).

3 149. Upon information and belief, Defendant actively induces users to  
4 directly infringe the asserted claims of the '194 patent. By way of example  
5 only, upon information and belief, Defendant actively induces direct  
6 infringement of the '194 patent by providing directions, demonstrations, guides,  
7 manuals, training for use, and/or other materials necessary for the use of the  
8 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
9 Upon information and belief, Defendant knew or should have known that these  
10 activities would cause direct infringement.

11 150. Upon information and belief, Defendant's acts constitute  
12 contributory infringement of the '194 patent in violation of 35 U.S.C. § 271(c).  
13 Upon information and belief, Defendant contributorily infringes because, among  
14 other things, Defendant offers to sell and/or sells within the United States,  
15 and/or imports into the United States, components of the Apple Watch Series 4  
16 and later devices and Apple iPhones that constitute material parts of the  
17 invention of the asserted claims of the '194 patent, are not staple articles or  
18 commodities of commerce suitable for substantial non-infringing use and are  
19 known by Defendant to be especially made or especially adapted for use in an  
20 infringement of the '194 patent.

21 151. Defendant's infringement of the '194 patent is willful, deliberate,  
22 and intentional by continuing its acts of infringement after becoming aware of  
23 the '194 patent and its infringement thereof, thus acting in reckless disregard of  
24 Masimo's patent rights.

25 152. Because of Defendant's infringement of the '194 patent, Masimo  
26 has suffered and will continue to suffer irreparable harm and injury, including  
27 monetary damages in an amount to be determined at trial.  
28

1           153. Upon information and belief, unless enjoined, Defendant, and/or  
2 others acting on behalf of Defendant, will continue their infringing acts, thereby  
3 causing additional irreparable injury to Masimo for which there is no adequate  
4 remedy at law.

5                           **XV. EIGHTH CAUSE OF ACTION**

6                           **(INFRINGEMENT OF U.S. PATENT NO. 10,702,195)**

7           154. Plaintiff Masimo hereby realleges and incorporates by reference  
8 the allegations set forth in paragraphs 1 through 50.

9           155. Upon information and belief, Defendant's products, including at  
10 least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the  
11 '195 patent under at least 35 U.S.C. § 271(a), (b), and (c).

12           156. Upon information and belief, Defendant has directly infringed one  
13 or more claims of the '195 patent through manufacture, use, sale, offer for sale,  
14 and/or importation into the United States of physiological monitors, including  
15 the Apple Watch Series 4 and later devices.

16           157. For example, upon information and belief, in operation, the Apple  
17 Watch Series 4 and later devices in combination with iPhone devices include all  
18 of the limitations of Claim 1 of the '195 patent as set forth herein and further  
19 illustrated in the claim chart shown in Exhibit 1. The Apple Watch Series 4 and  
20 later devices are user-worn physiological measurement devices as shown in  
21 the image below found on the Apple website at [https://www.apple.com/apple-](https://www.apple.com/apple-watch-series-4/health/)  
22 [watch-series-4/health/](https://www.apple.com/apple-watch-series-4/health/):  
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158. The Apple Watch Series 4 and later devices include one or more emitters configured to emit light into tissue of a user, a first set of four photodiodes connected to one another in parallel to provide a first signal stream and a second set of four photodiodes connected to one another in parallel to provide a second signal stream and positioned on a first surface and surrounded by a wall that is operably connected to the first surface, as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



1           159. Upon information and belief, relevant technology in the Apple  
2 Watch Series 4 and later devices is described in the below citation to U.S. Patent  
3 Application Publication 2019/0072912 (the '912 publication). The Apple  
4 Watch Series 4 and later devices include a wall that surrounds the photodiodes,  
5 a cover located above the wall and comprising a single protruding convex  
6 surface configured to be located between tissue of the user and the photodiodes  
7 when the physiological measurement device is worn by the user, wherein the  
8 physiological measurement device provides a plurality of optical paths, wherein  
9 each of the optical paths exits an emitter of the one or more emitters, passes  
10 through tissue of the user, passes through the single protruding convex surface,  
11 and arrives at a corresponding photodiode of the at least one of the first or  
12 second sets of photodiodes, the corresponding photodiode configured to receive  
13 light emitted by the emitter after traversal by the light of a corresponding optical  
14 path of the plurality of optical paths and after attenuation of the light by tissue  
15 of the user. Fig. 4C and the corresponding text of the '912 publication show, for  
16 example, such wall and cover:

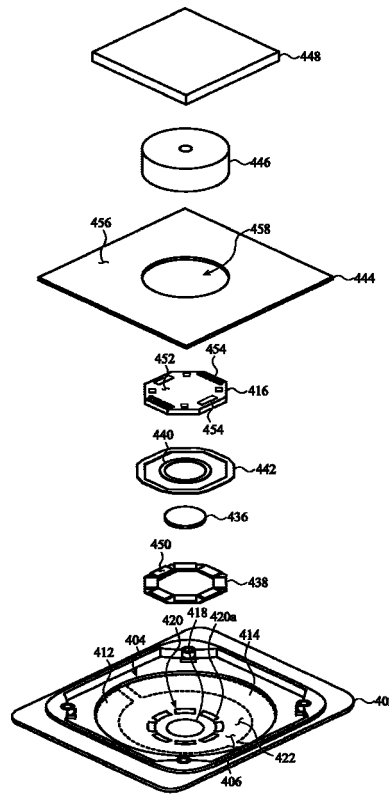


FIG. 4C

160. Upon information and belief, Defendant has knowledge of Masimo's patents, including the '195 patent, at least based on O'Reilly and Lamego's former positions with Plaintiffs. Masimo filed provisional patent applications that led to the '195 patent in August 2008, while O'Reilly and Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of the '195 patent. Defendant had knowledge of the '195 patent no later than the filing of this Second Amended Complaint.

161. Upon information and belief, Defendant has actively induced others to infringe the '195 patent by marketing and selling the above Apple Watch Series 4 and later devices, knowing and intending that such systems would be used by customers and end users in a manner that infringes the '195 patent. To that end, Defendant provides instructions and teachings to its customers and end users that such Apple Watch Series 4 and later devices be

1 used to infringe the '195 patent. Defendant's acts constitute infringement of the  
2 '195 patent in violation of 35 U.S.C. § 271(b).

3 162. Upon information and belief, Defendant actively induces users to  
4 directly infringe the asserted claims of the '195 patent. By way of example  
5 only, upon information and belief, Defendant actively induces direct  
6 infringement of the '195 patent by providing directions, demonstrations, guides,  
7 manuals, training for use, and/or other materials necessary for the use of the  
8 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
9 Upon information and belief, Defendant knew or should have known that these  
10 activities would cause direct infringement.

11 163. Upon information and belief, Defendant's acts constitute  
12 contributory infringement of the '195 patent in violation of 35 U.S.C. § 271(c).  
13 Upon information and belief, Defendant contributorily infringes because, among  
14 other things, Defendant offers to sell and/or sells within the United States,  
15 and/or imports into the United States, components of the Apple Watch Series 4  
16 and later devices and Apple iPhones that constitute material parts of the  
17 invention of the asserted claims of the '195 patent, are not staple articles or  
18 commodities of commerce suitable for substantial non-infringing use and are  
19 known by Defendant to be especially made or especially adapted for use in an  
20 infringement of the '195 patent.

21 164. Defendant's infringement of the '195 patent is willful, deliberate,  
22 and intentional by continuing its acts of infringement after becoming aware of  
23 the '195 patent and its infringement thereof, thus acting in reckless disregard of  
24 Masimo's patent rights.

25 165. Because of Defendant's infringement of the '195 patent, Masimo  
26 has suffered and will continue to suffer irreparable harm and injury, including  
27 monetary damages in an amount to be determined at trial.  
28

1           166. Upon information and belief, unless enjoined, Defendant, and/or  
2 others acting on behalf of Defendant, will continue their infringing acts, thereby  
3 causing additional irreparable injury to Masimo for which there is no adequate  
4 remedy at law.

5                           **XVI. NINTH CAUSE OF ACTION**

6                           **(INFRINGEMENT OF U.S. PATENT NO. 10,709,366)**

7           167. Plaintiff Masimo hereby realleges and incorporates by reference  
8 the allegations set forth in paragraphs 1 through 50.

9           168. Upon information and belief, Defendant's products, including at  
10 least the Apple Watch Series 4 and later devices, infringe at least Claim 1 of the  
11 '366 patent under at least 35 U.S.C. § 271(a), (b), and (c).

12           169. Upon information and belief, Defendant has directly infringed one  
13 or more claims of the '366 patent through manufacture, use, sale, offer for sale,  
14 and/or importation into the United States of physiological monitors, including  
15 the Apple Watch Series 4 and later devices.

16           170. For example, upon information and belief, in operation, the Apple  
17 Watch Series 4 and later devices include all of the limitations of Claim 1 of the  
18 '366 patent as set forth herein and further illustrated in the claim chart shown in  
19 Exhibit 1. The Apple Watch Series 4 and later devices are noninvasive  
20 physiological parameter measurement devices adapted to be worn by a wearer  
21 as shown in the image below found on the Apple website at  
22 <https://www.apple.com/apple-watch-series-4/health/>:  
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171. The Apple Watch Series 4 and later devices include upon information and belief one or more emitters, a substrate having a surface, a first set of four photodiodes arranged on the surface and spaced apart from each other and connected to one another in parallel to provide a first signal stream responsive to light from at least one of the one or more light emitters attenuated by body tissue, a second set of four photodiodes arranged on the surface and spaced apart from each other and connected to one another in parallel to provide a second signal stream responsive to light from at least one of the one or more light emitters attenuated by body tissue, at least one of the first signal stream or the second signal stream includes information usable to determine a physiological parameter of a wearer of the noninvasive physiological parameter measurement device as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



172. Upon information and belief, relevant technology in the Apple Watch Series 4 and later devices is described in the below citation to U.S. Patent Application Publication 2019/0072912 (the '912 publication). The Apple Watch Series 4 and later devices include a wall extending from the surface and configured to surround at least the first and second sets of photodiodes; and a cover arranged to cover at least a portion of the surface of the substrate, wherein the cover comprises a protrusion that extends over all of the photodiodes of the first and second sets of photodiodes arranged on the surface, and wherein the cover is further configured to cover the wall. Fig. 4C and the corresponding text of the '912 publication show, for example, such wall and cover:

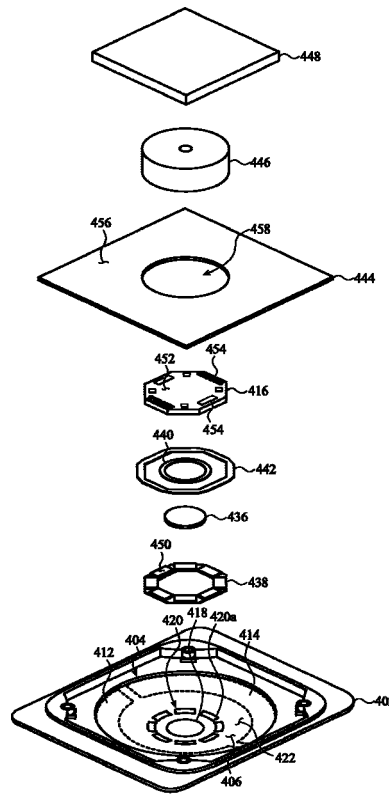


FIG. 4C

173. Upon information and belief, Defendant has knowledge of Masimo's patents, including the '366 patent, at least based on O'Reilly and Lamego's former positions with Plaintiffs. Masimo filed provisional patent applications that led to the '366 patent in August 2008, while O'Reilly and Lamego were with Masimo and/or Cercacor. Lamego is a named inventor of the '366 patent. Defendant had knowledge of the '366 patent no later than the filing of this Second Amended Complaint.

174. Upon information and belief, Defendant has actively induced others to infringe the '366 patent by marketing and selling the above Apple Watch Series 4 and later devices, knowing and intending that such systems would be used by customers and end users in a manner that infringes the '366 patent. To that end, Defendant provides instructions and teachings to its customers and end users that such Apple Watch Series 4 and later devices be

1 used to infringe the '366 patent. Defendant's acts constitute infringement of the  
2 '366 patent in violation of 35 U.S.C. § 271(b).

3 175. Upon information and belief, Defendant actively induces users to  
4 directly infringe the asserted claims of the '366 patent. By way of example  
5 only, upon information and belief, Defendant actively induces direct  
6 infringement of the '366 patent by providing directions, demonstrations, guides,  
7 manuals, training for use, and/or other materials necessary for the use of the  
8 Apple Watch Series 4 and later devices, including use with Apple iPhones.  
9 Upon information and belief, Defendant knew or should have known that these  
10 activities would cause direct infringement.

11 176. Upon information and belief, Defendant's acts constitute  
12 contributory infringement of the '366 patent in violation of 35 U.S.C. § 271(c).  
13 Upon information and belief, Defendant contributorily infringes because, among  
14 other things, Defendant offers to sell and/or sells within the United States,  
15 and/or imports into the United States, components of the Apple Watch Series 4  
16 and later devices and Apple iPhones that constitute material parts of the  
17 invention of the asserted claims of the '366 patent, are not staple articles or  
18 commodities of commerce suitable for substantial non-infringing use and are  
19 known by Defendant to be especially made or especially adapted for use in an  
20 infringement of the '366 patent.

21 177. Defendant's infringement of the '366 patent is willful, deliberate,  
22 and intentional by continuing its acts of infringement after becoming aware of  
23 the '366 patent and its infringement thereof, thus acting in reckless disregard of  
24 Masimo's patent rights.

25 178. Because of Defendant's infringement of the '366 patent, Masimo  
26 has suffered and will continue to suffer irreparable harm and injury, including  
27 monetary damages in an amount to be determined at trial.  
28

1           179. Upon information and belief, unless enjoined, Defendant, and/or  
2 others acting on behalf of Defendant, will continue their infringing acts, thereby  
3 causing additional irreparable injury to Masimo for which there is no adequate  
4 remedy at law.

5                           **XVII. TENTH CAUSE OF ACTION**  
6                           **(INFRINGEMENT OF U.S. PATENT NO. 6,771,994)**

7           180. Plaintiff Masimo hereby realleges and incorporates by reference  
8 the allegations set forth in paragraphs 1 through 50.

9           181. Upon information and belief, Defendant's products, including at  
10 least the Apple Watch Series 4 and later devices, infringe at least Claim 15 of  
11 the '994 patent under at least 35 U.S.C. § 271(a), (b), and (c).

12           182. Upon information and belief, Defendant has directly infringed one  
13 or more claims of the '994 patent through manufacture, use, sale, offer for sale,  
14 and/or importation into the United States of physiological monitors, including  
15 the Apple Watch Series 4 and later devices.

16           183. For example, upon information and belief, in operation, the Apple  
17 Watch Series 4 and later devices include all of the limitations of Claim 15 of the  
18 '994 patent as set forth herein and further illustrated in the claim chart shown in  
19 Exhibit 1. Upon information and belief, the Apple Watch Series 4 and later  
20 devices detect light transmitted through body tissue carrying pulsing blood to  
21 determine heart rate as shown in the image below found on the Apple website at  
22 <https://www.apple.com/apple-watch-series-4/health/>:  
23  
24  
25  
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184. The Apple Watch Series 4 and later devices include at least one light emission device and a light sensitive detector as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



185. The detectors output signals responsive to light from the light emitters attenuated by body tissue. Upon information and belief, the signals are indicative of a physiological parameter (for example, heart rate) of the wearer.

186. Upon information and belief, relevant technology in the Apple Watch Series 4 and later devices is described in the below citation to U.S. Patent Application Publication 2019/0090806 (the '806 publication). The Apple

1 Watch Series 4 and later devices include a plurality of louvers positioned over  
2 the light sensitive detector to accept light from the at least one light emission  
3 device originating from a general direction of the at least one light emission  
4 device and then transmitting through body tissue carrying pulsing blood,  
5 wherein the louvers accept the light when the sensor is properly applied to tissue  
6 of a patient. Upon information and belief, this technology is described, for  
7 example, in Fig. 7 and the corresponding text of the '806 publication:

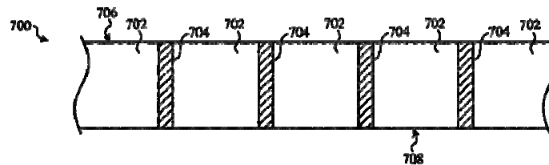


FIG. 7

11 187. Upon information and belief, Defendant has knowledge of  
12 Masimo's patents, including the '994 patent, at least based on O'Reilly and  
13 Lamego's former positions with Plaintiffs. Masimo filed a patent application  
14 that led to the '994 patent on June 16, 2000. The '994 patent issued on August  
15 3, 2004, and Masimo has maintained the patent while O'Reilly and Lamego  
16 were with Masimo and/or Cercacor. Defendant had knowledge of the  
17 '994 patent no later than the filing of the original Complaint.

18 188. Upon information and belief, Defendant has actively induced  
19 others to infringe the '994 patent by marketing and selling the above Apple  
20 Watch Series 4 and later devices, knowing and intending that such systems  
21 would be used by customers and end users in a manner that infringes the  
22 '994 patent. To that end, Defendant provides instructions and teachings to its  
23 customers and end users that such Apple Watch Series 4 and later devices be  
24 used to infringe the '994 patent. Defendant's acts constitute infringement of the  
25 '994 patent in violation of 35 U.S.C. § 271(b).

26 189. Upon information and belief, Defendant actively induces users to  
27 directly infringe the asserted claims of the '994 patent. By way of example  
28 only, upon information and belief, Defendant actively induces direct



1 infringement of the '994 patent by providing directions, demonstrations, guides,  
2 manuals, training for use, and/or other materials necessary for the use of the  
3 Apple Watch Series 4 and later devices. Upon information and belief,  
4 Defendant knew or should have known that these activities would cause direct  
5 infringement.

6 190. Upon information and belief, Defendant's acts constitute  
7 contributory infringement of the '994 patent in violation of 35 U.S.C. § 271(c).  
8 Upon information and belief, Defendant contributorily infringes because, among  
9 other things, Defendant offers to sell and/or sells within the United States,  
10 and/or imports into the United States, components of the Apple Watch Series 4  
11 and later devices that constitute material parts of the invention of the asserted  
12 claims of the '994 patent, are not staple articles or commodities of commerce  
13 suitable for substantial non-infringing use, and are known by Defendant to be  
14 especially made or especially adapted for use in an infringement of the  
15 '994 patent.

16 191. Defendant's infringement of the '994 patent is willful, deliberate,  
17 and intentional by continuing its acts of infringement after becoming aware of  
18 the '994 patent and its infringement thereof, thus acting in reckless disregard of  
19 Masimo's patent rights.

20 192. Because of Defendant's infringement of the '994 patent, Masimo  
21 has suffered and will continue to suffer irreparable harm and injury, including  
22 monetary damages in an amount to be determined at trial.

23 193. Upon information and belief, unless enjoined, Defendant, and/or  
24 others acting on behalf of Defendant, will continue their infringing acts, thereby  
25 causing additional irreparable injury to Masimo for which there is no adequate  
26 remedy at law.



**XVIII. ELEVENTH CAUSE OF ACTION**  
**(INFRINGEMENT OF U.S. PATENT NO. 8,457,703)**

194. Plaintiff Masimo hereby realleges and incorporates by reference the allegations set forth in paragraphs 1 through 50.

195. Upon information and belief, Defendant's products, including at least the Apple Watch Series 3 and later devices, infringe at least Claim 1 of the '703 patent under at least 35 U.S.C. § 271(a), (b), and (c).

196. Upon information and belief, Defendant has directly infringed one or more claims of the '703 patent through manufacture, use, sale, offer for sale, and/or importation into the United States of physiological monitors, including the Apple Watch Series 3 and later devices.

197. For example, upon information and belief, in operation, the Apple Watch Series 3 and later devices include all of the limitations of Claim 1 of the '703 patent as set forth herein and further illustrated in the claim chart shown in Exhibit 1. The Apple Watch Series 3 and later devices provide an indication of a physiological parameter (for example, heart rate) of the wearer as shown in the image below found on the Apple website at <https://www.apple.com/apple-watch-series-4/health/>:



1           198. The Apple Watch Series 3 and later devices drive one or more light  
2 sources configured to emit light into tissue and receives one or more signals  
3 from one or more detectors configured to detect light after attenuation by tissue  
4 as shown in the image below found on the Apple website at  
5 <https://support.apple.com/en-us/HT204666>:



15  
16           199. The detectors output signals responsive to light from the light  
17 emitters attenuated by body tissue. Upon information and belief, the signals are  
18 indicative of a physiological parameter (for example, heart rate) of the wearer.

19           200. Upon information and belief, the Apple Watch Series 3 and later  
20 devices continuously operate at a lower power consumption level to determine  
21 measurement values for heart rate, as described at [https://support.apple.com/en-](https://support.apple.com/en-us/HT204666)  
22 [us/HT204666](https://support.apple.com/en-us/HT204666):

23           The optical heart sensor in Apple Watch uses what is known as  
24 photoplethysmography. This technology, while difficult to  
25 pronounce, is based on a very simple fact: Blood is red because it  
26 reflects red light and absorbs green light. Apple Watch uses green  
27 LED lights paired with light-sensitive photodiodes to detect the  
28 amount of blood flowing through your wrist at any given moment.

1 When your heart beats, the blood flow in your wrist — and the  
2 green light absorption — is greater. Between beats, it's less. By  
3 flashing its LED lights hundreds of times per second, Apple Watch  
4 can calculate the number of times the heart beats each minute —  
5 your heart rate. The optical heart sensor supports a range of 30–210  
6 beats per minute. In addition, the optical heart sensor is designed to  
7 compensate for low signal levels by increasing both LED  
8 brightness and sampling rate.

9 201. Upon information and belief, the Apple Watch Series 3 and later  
10 devices as described above compare processing characteristics to a  
11 predetermined threshold, and when the processing characteristics pass the  
12 threshold, the Apple Watch Series 3 and later devices transition to continuously  
13 operating at a higher power consumption level, wherein the continuously  
14 operating at the lower power consumption level comprises reducing activation  
15 of an attached sensor, the sensor positioning the light sources and the detectors  
16 proximate to the tissue. Upon information and belief, relevant technology in the  
17 Apple Watch Series 3 and later devices is described in International Application  
18 Publication WO 2018/226305 (the '305 publication), for example, at paragraphs  
19 [0055]-[0061].

20 202. Upon information and belief, Defendant has knowledge of  
21 Masimo's patents, including the '703 patent, at least based on O'Reilly and  
22 Lamego's former positions with Plaintiffs. Masimo filed a provisional patent  
23 application that led to the '703 patent on July 2, 2001. The '703 patent issued  
24 on June 4, 2013, while O'Reilly and Lamego were with Masimo and/or  
25 Cercacor. Defendant had knowledge of the '703 patent no later than the filing  
26 of the original Complaint.

27 203. Upon information and belief, Defendant has actively induced  
28 others to infringe the '703 patent by marketing and selling the above Apple

1 Watch Series 3 and later devices, knowing and intending that such systems  
2 would be used by customers and end users in a manner that infringes the  
3 '703 patent. To that end, Defendant provides instructions and teachings to its  
4 customers and end users that such Apple Watch Series 3 and later devices be  
5 used to infringe the '703 patent. Defendant's acts constitute infringement of the  
6 '703 patent in violation of 35 U.S.C. § 271(b).

7 204. Upon information and belief, Defendant actively induces users to  
8 directly infringe the asserted claims of the '703 patent. By way of example  
9 only, upon information and belief, Defendant actively induces direct  
10 infringement of the '703 patent by providing directions, demonstrations, guides,  
11 manuals, training for use, and/or other materials necessary for the use of the  
12 Apple Watch Series 3 and later devices. Upon information and belief,  
13 Defendant knew or should have known that these activities would cause direct  
14 infringement.

15 205. Upon information and belief, Defendant's acts constitute  
16 contributory infringement of the '703 patent in violation of 35 U.S.C. § 271(c).  
17 Upon information and belief, Defendant contributorily infringes because, among  
18 other things, Defendant offers to sell and/or sells within the United States,  
19 and/or imports into the United States, components of the Apple Watch Series 3  
20 and later devices that constitute material parts of the invention of the asserted  
21 claims of the '703 patent, are not staple articles or commodities of commerce  
22 suitable for substantial non-infringing use, and are known by Defendant to be  
23 especially made or especially adapted for use in an infringement of the  
24 '703 patent.

25 206. Defendant's infringement of the '703 patent is willful, deliberate,  
26 and intentional by continuing its acts of infringement after becoming aware of  
27 the '703 patent and its infringement thereof, thus acting in reckless disregard of  
28 Masimo's patent rights.

1           207. Because of Defendant's infringement of the '703 patent, Masimo  
2 has suffered and will continue to suffer irreparable harm and injury, including  
3 monetary damages in an amount to be determined at trial.

4           208. Upon information and belief, unless enjoined, Defendant, and/or  
5 others acting on behalf of Defendant, will continue their infringing acts, thereby  
6 causing additional irreparable injury to Masimo for which there is no adequate  
7 remedy at law.

8                           **XIX. TWELFTH CAUSE OF ACTION**

9                           **(INFRINGEMENT OF U.S. PATENT NO. 10,433,776)**

10           209. Plaintiff Masimo hereby realleges and incorporates by reference  
11 the allegations set forth in paragraphs 1 through 50.

12           210. Upon information and belief, Defendant's products, including at  
13 least the Apple Watch Series 3 and later devices, infringe at least Claim 1 of the  
14 '776 patent under at least 35 U.S.C. § 271(a), (b), and (c).

15           211. Upon information and belief, Defendant has directly infringed one  
16 or more claims of the '776 patent through manufacture, use, sale, offer for sale,  
17 and/or importation into the United States of physiological monitors, including  
18 the Apple Watch Series 3 and later devices.

19           212. For example, upon information and belief, in operation, the Apple  
20 Watch Series 3 and later devices include all of the limitations of Claim 1 of the  
21 '776 patent as set forth herein and further illustrated in the claim chart shown in  
22 Exhibit 1. The Apple Watch Series 3 and later devices are configured to  
23 monitor at least a pulse rate of a patient by processing signals responsive to light  
24 attenuated by body tissue of the wearer as shown in the image below found on  
25 the Apple website at <https://www.apple.com/apple-watch-series-4/health/>:  
26  
27  
28



213. The Apple Watch Series 3 and later devices drive one or more light sources configured to emit light into tissue and receives one or more signals from one or more detectors configured to detect light after attenuation by tissue as shown in the image below found on the Apple website at <https://support.apple.com/en-us/HT204666>:



214. Upon information and belief, the Apple Watch Series 3 and later devices operate according to a first control protocol, wherein said operating includes activating a first control protocol light source in accordance with the

1 first control protocol, the first control protocol light source including one or  
2 more of a plurality of light sources, and when operating according to the first  
3 control protocol, calculating, by the patient monitor, measurement values of the  
4 pulse rate, the measurement values responsive to light from the first control  
5 protocol light source, detected by a detector of an optical sensor after  
6 attenuation by body tissue of the patient using the patient monitor as explained,  
7 for example, on the Apple website at [https://support.apple.com/en-](https://support.apple.com/en-us/HT204666)  
8 [us/HT204666](https://support.apple.com/en-us/HT204666). That webpage explains the optical heart sensor uses  
9 photoplethysmography. “Apple Watch uses green LED lights paired with  
10 light-sensitive photodiodes to detect the amount of blood flowing through your  
11 wrist at any given moment. When your heart beats, the blood flow in your wrist  
12 — and the green light absorption — is greater. Between beats, it’s less. By  
13 flashing its LED lights hundreds of times per second, Apple Watch can calculate  
14 the number of times the heart beats each minute — your heart rate. The optical  
15 heart sensor supports a range of 30–210 beats per minute. In addition, the  
16 optical heart sensor is designed to compensate for low signal levels by  
17 increasing both LED brightness and sampling rate.” That webpage further  
18 explains that the “optical heart sensor can also use infrared light. This mode is  
19 what Apple Watch uses when it measures your heart rate in the background, and  
20 for heart rate notifications. Apple Watch uses green LED lights to measure your  
21 heart rate during workouts and Breathe sessions, and to calculate walking  
22 average and Heart Rate Variability (HRV).”

23 215. Upon information and belief, the Apple Watch Series 3 and later  
24 devices generate a trigger signal, wherein generating said trigger signal is  
25 responsive to at least one of: a comparison of processing characteristics to a  
26 predetermined threshold, a physiological event, or signal quality characteristics  
27 of signals received from the detector, and in response to receiving the trigger  
28 signal, operating the patient monitor according to a second control protocol



1 different from the first control protocol, wherein said operating includes  
2 activating a second control protocol light source in accordance with the second  
3 control protocol, the second control protocol light source including one or more  
4 of the plurality of light sources, and when operating the patient monitor  
5 according to the second control protocol, calculating the measurement values of  
6 the pulse rate, the measurement values responsive to light from the second  
7 control protocol light source, detected by the detector after attenuation by the  
8 body tissue of the patient using the patient monitor, wherein said operating of  
9 the patient monitor according to the first control protocol operates the first  
10 control protocol light source according to a first duty cycle and said operating of  
11 the patient monitor according to the second control protocol operates the second  
12 control protocol light source according to a second duty cycle, wherein power  
13 consumption of the first control protocol light source according to the first duty  
14 cycle is different than power consumption of the second control protocol light  
15 source according to the second duty cycle. Upon information and belief,  
16 relevant technology in the Apple Watch Series 3 and later devices is described  
17 in International Application Publication WO 2018/226305 (the '305  
18 publication), for example, at paragraphs [0055]-[0061].

19 216. Upon information and belief, Defendant has knowledge of  
20 Masimo's patents, including the '776 patent, at least based on O'Reilly and  
21 Lamego's former positions with Plaintiffs. Masimo filed a provisional patent  
22 application that led to the '776 patent on July 2, 2001. The '776 patent issued  
23 on June 4, 2013, while O'Reilly and Lamego were with Masimo and/or  
24 Cercacor. Defendant had knowledge of the '776 patent no later than the filing  
25 of the original Complaint.

26 217. Upon information and belief, Defendant has actively induced  
27 others to infringe the '776 patent by marketing and selling the above Apple  
28 Watch Series 3 and later devices, knowing and intending that such systems



1 would be used by customers and end users in a manner that infringes the  
2 '776 patent. To that end, Defendant provides instructions and teachings to its  
3 customers and end users that such Apple Watch Series 3 and later devices be  
4 used to infringe the '776 patent. Defendant's acts constitute infringement of the  
5 '776 patent in violation of 35 U.S.C. § 271(b).

6 218. Upon information and belief, Defendant actively induces users to  
7 directly infringe the asserted claims of the '776 patent. By way of example  
8 only, upon information and belief, Defendant actively induces direct  
9 infringement of the '776 patent by providing directions, demonstrations, guides,  
10 manuals, training for use, and/or other materials necessary for the use of the  
11 Apple Watch Series 3 and later devices. Upon information and belief,  
12 Defendant knew or should have known that these activities would cause direct  
13 infringement.

14 219. Upon information and belief, Defendant's acts constitute  
15 contributory infringement of the '776 patent in violation of 35 U.S.C. § 271(c).  
16 Upon information and belief, Defendant contributorily infringes because, among  
17 other things, Defendant offers to sell and/or sells within the United States,  
18 and/or imports into the United States, components of the Apple Watch Series 3  
19 and later devices that constitute material parts of the invention of the asserted  
20 claims of the '776 patent, are not staple articles or commodities of commerce  
21 suitable for substantial non-infringing use, and are known by Defendant to be  
22 especially made or especially adapted for use in an infringement of the  
23 '776 patent.

24 220. Defendant's infringement of the '776 patent is willful, deliberate,  
25 and intentional by continuing its acts of infringement after becoming aware of  
26 the '776 patent and its infringement thereof, thus acting in reckless disregard of  
27 Masimo's patent rights.  
28

1           221. Because of Defendant's infringement of the '776 patent, Masimo  
2 has suffered and will continue to suffer irreparable harm and injury, including  
3 monetary damages in an amount to be determined at trial.

4           222. Upon information and belief, unless enjoined, Defendant, and/or  
5 others acting on behalf of Defendant, will continue their infringing acts, thereby  
6 causing additional irreparable injury to Masimo for which there is no adequate  
7 remedy at law.

8                           **XX. THIRTEENTH CAUSE OF ACTION**  
9                           **(TRADE SECRET MISAPPROPRIATION UNDER**  
10                          **CALIFORNIA'S UNIFORM TRADE SECRET ACT)**

11           223. Plaintiffs hereby reallege and incorporate by reference the  
12 allegations set forth in paragraphs 1 through 50.

13           224. This is a cause of action for Misappropriation of Trade Secrets under  
14 California's Uniform Trade Secrets Act, Cal. Civ. Code §§ 3426 *et seq.*, based  
15 upon Defendant's and its employees' wrongful and improper acquisition, use, and  
16 disclosure of confidential and proprietary trade secret information of Plaintiffs.

17           225. Plaintiffs own the Confidential Information. Plaintiffs' Confidential  
18 Information is currently or was, at least at the time of Defendant's and its  
19 employees' misappropriation, not generally known to the public or to other  
20 persons who can obtain economic value from its disclosure or use. All individuals  
21 with access to Plaintiffs' Confidential Information were instructed to keep it  
22 confidential, and they were subject to obligations to keep Plaintiffs' Confidential  
23 Information secret. For example, Plaintiffs marked documents confidential, and  
24 instructed those individuals with access to the information to treat it as  
25 confidential, restricted access to the information, and required individuals and  
26 companies to enter into confidentiality agreements with Plaintiffs in order to  
27 receive Plaintiffs' Confidential Information.

1           226. Plaintiffs' Confidential Information derives independent economic  
2 value, actual and potential, because it is, or was at the time of Defendant's and its  
3 employees' misappropriation, not generally known to the public or to other  
4 persons who can obtain economic value from its disclosure or use. The actual and  
5 potential independent economic value of Plaintiffs' Confidential Information is  
6 derived from not being generally known because it gives or gave Plaintiffs an  
7 actual and potential business advantage over others who do not know the  
8 information and who could obtain economic value from its disclosure or use. If  
9 others obtained access to Plaintiffs' Confidential Information, they could use the  
10 information to deprive Plaintiffs of the business advantage it has over others, as  
11 well as to themselves obtain a business advantage over others.

12           227. Plaintiffs made reasonable efforts under the circumstances to keep  
13 Plaintiffs' Confidential Information from becoming generally known. For  
14 example, Plaintiffs' efforts included marking documents confidential, instructing  
15 individuals with access to the information to treat it as confidential, restricting  
16 access to the information, and requiring individuals and companies to enter into  
17 confidentiality agreements with Plaintiffs in order to receive Plaintiffs'  
18 Confidential Information. Accordingly, Plaintiffs' Confidential Information  
19 constitutes a "trade secret" pursuant to Cal. Civ. Code § 3426.1.

20           228. Plaintiffs are informed and believe, and thereon allege, that  
21 Defendant misappropriated Plaintiffs' Confidential Information by acquisition at  
22 least from Plaintiffs' former employees who left Plaintiffs to work for Defendant.  
23 For example, upon information and belief, O'Reilly and Lamego disclosed  
24 Plaintiffs' Confidential Information, without Plaintiffs' consent, to Defendant. At  
25 the time of disclosure, O'Reilly and Lamego knew, or had reason to know, that  
26 their knowledge of Plaintiffs' Confidential Information was acquired by an  
27 employer-employee relationship, fiduciary relationship, and employment  
28 agreements, which created a duty for them to keep Plaintiffs' Confidential

1 Information secret. O'Reilly and Lamego also knew, or had reason to know, that  
2 disclosing Plaintiffs' Confidential Information to Defendant constituted a breach  
3 of those obligations.

4 229. At the time of acquisition, Defendant also knew, or had reason to  
5 know, that its employees obtained Plaintiffs' Confidential Information pursuant to  
6 a duty or obligation to keep Plaintiffs' Confidential Information secret. This duty  
7 or obligation arose from an employer-employee relationship, fiduciary  
8 relationship, and employment agreements. For example, among other things,  
9 Defendant knew O'Reilly was the Chief Medical Officer at Masimo. Defendant  
10 knew O'Reilly was in charge of Masimo's data collection efforts at hospitals and  
11 was involved in strategic plans for the company. Defendant also knew Lamego  
12 was the Chief Technical Officer of Cercacor and a Research Scientist at  
13 Masimo. Defendant knew Lamego and O'Reilly were each under a duty to  
14 maintain the secrecy of the information they obtained from Plaintiffs. Defendant  
15 knew Plaintiffs considered the information confidential by virtue of its prior  
16 relationship with Plaintiffs. Defendant had also received a letter dated January  
17 24, 2014, from Plaintiffs explaining that Lamego possessed Plaintiffs'  
18 Confidential Information, asking Defendant not to use such information, and  
19 attaching a copy of Lamego's Employee Confidentiality Agreement with  
20 Cercacor. The Employee Confidentiality Agreement stated, among other things,  
21 "[a]fter my employment with [Cercacor] has terminated, I will not disclose or  
22 make use of any Confidential Information for any purpose, either on my own or  
23 on behalf of another business." Lamego also worked at Apple for less than one  
24 year, but quickly disclosed information to Apple that took many years to develop  
25 at Plaintiffs. Apple knew or at least should have known that Lamego could not  
26 develop the detailed trade secrets described herein in such a short amount of time.  
27 On information and belief, Apple targeted and recruited Plaintiffs' employees,  
28

1 including O'Reilly and Lamego, because of their knowledge of Plaintiffs'  
2 Confidential Information.

3 230. Nevertheless, on information and belief, Defendant induced its  
4 employees, including Lamego and O'Reilly, to use and/or disclose Plaintiffs'  
5 Confidential Information and the employees used and/or disclosed Plaintiffs'  
6 Confidential Information for the benefit of Defendant while employed by  
7 Defendant. Defendant met with Plaintiffs because Defendant wanted Plaintiffs'  
8 technology and wanted to integrate it into Defendant's products. After learning  
9 more about the capability of Plaintiffs' technology at the meetings, Defendant  
10 began systematically hiring Plaintiffs' employees, including Masimo's Chief  
11 Medical Officer, Michael O'Reilly, and many others. Apple's Chief Executive  
12 Officer, Tim Cook, interviewed O'Reilly. Tim Cook has publicly stated that he  
13 sees healthcare as central to Apple's future. Defendant hired O'Reilly to oversee  
14 Apple's strategic objective in healthcare and gave him the title of Apple's Vice  
15 President of Medical Technology.

16 231. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 After Defendant hired Lamego, Plaintiffs informed Apple by letter that Lamego  
20 possessed Plaintiffs' Confidential Information and asked Apple to respect  
21 Plaintiffs' Confidential Information. Defendant ignored these warnings and  
22 sought out and obtained extensive patent disclosures from Lamego in the short  
23 time he worked at Apple and selectively requested non-publication of those  
24 applications containing Plaintiffs' Confidential Information. [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 [REDACTED] Apple had Lamego work on the Apple  
2 Watch project and tasked him with producing key intellectual property related to  
3 bio-sensing, defining required resources for current and future bio-sensing  
4 functionalities, proposing and reviewing hardware and algorithm architectures,  
5 and advising Apple's team regarding bio-sensing functionalities.

6 232. Apple provided substantial financial incentives, which had the effect  
7 of enticing O'Reilly, Lamego, and others to use and/or disclose Plaintiffs'  
8 Confidential Information to help Apple in its strategic objective in healthcare.  
9 O'Reilly later informed Plaintiffs that, although he viewed Masimo as his family,  
10 Apple had offered him so much money that he simply could not refuse.  
11 Defendant knew or should have known that those incentives would cause  
12 O'Reilly, Lamego, and others to use and disclosure of Plaintiffs' Confidential  
13 Information. Apple thereby induced Plaintiffs' former employees to use and  
14 disclose Plaintiffs' Confidential Information while employed by Apple and for  
15 Apple's benefit. Thus, Defendant acquired Plaintiffs' Confidential Information  
16 through the improper means of its employees breaching a duty to maintain secrecy  
17 owed to Plaintiffs, as well as inducing its employees to breach a duty to maintain  
18 secrecy owed to Plaintiffs.

19 233. On information and belief, Defendant and its employees used and  
20 disclosed Plaintiffs' Confidential Information it obtained from Plaintiffs and their  
21 former employees without Plaintiffs' express or implied consent. Defendant and  
22 its employees used and disclosed Plaintiffs' Confidential Information at least by  
23 incorporating it into Defendant's products, by filing patent applications containing  
24 Plaintiffs' Confidential Information, and using Plaintiffs' business and sales  
25 strategies without Plaintiffs' express or implied consent, as discussed in more  
26 detail in paragraphs 234-256 below.

27 [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
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21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED] Apple had

1 Lamego work on the Apple Watch project and tasked him with producing key  
2 intellectual property related to bio-sensing, defining required resources for current  
3 and future bio-sensing functionalities, proposing and reviewing hardware and  
4 algorithm architectures, and advising Apple's team regarding bio-sensing  
5 functionalities. [REDACTED]

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
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14 [REDACTED]  
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21 [REDACTED]  
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[REDACTED]

[REDACTED]

[REDACTED] Apple had  
Lamego work on the Apple Watch project and tasked him with producing key  
intellectual property related to bio-sensing, defining required resources for current  
and future bio-sensing functionalities, proposing and reviewing hardware and  
algorithm architectures, and advising Apple's team regarding bio-sensing  
functionalities. [REDACTED]

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7 [REDACTED]  
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9 [REDACTED]

10 [REDACTED]  
11 [REDACTED]

12 Apple's Chief Executive Officer, Tim Cook, interviewed O'Reilly. Tim Cook has  
13 publicly stated that he sees healthcare as central to Apple's future. Apple hired  
14 O'Reilly to oversee Apple's strategic objective in healthcare and gave him the title  
15 of Apple's Vice President of Medical Technology. O'Reilly represents Apple  
16 before the FDA and hospitals about Apple's healthcare projects, including the  
17 Apple Watch. [REDACTED]

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
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[REDACTED]

1 256. [REDACTED]

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] Apple had Lamego work on the Apple Watch project  
9 and tasked him with producing key intellectual property related to bio-sensing,  
10 defining required resources for current and future bio-sensing functionalities,  
11 proposing and reviewing hardware and algorithm architectures, and advising  
12 Apple's team regarding bio-sensing functionalities. [REDACTED]

13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 257. As discussed above, Defendant knew or had reason to know that its  
21 knowledge of Plaintiffs' Confidential Information came from Plaintiffs, that its  
22 employees' knowledge of Plaintiffs' Confidential Information came from  
23 Plaintiffs, and that its employees had previously acquired Plaintiffs' Confidential  
24 Information by virtue of employer-employee and fiduciary relationships and  
25 employment agreements, all of which created a duty to keep Plaintiffs'  
26 Confidential Information secret. Thus, Apple is directly liable for its use and  
27 disclosure of Plaintiffs' Confidential Information.  
28

1           258. Upon information and belief, Plaintiffs' former employees  
2 misappropriated Plaintiffs' Confidential Information by use and disclosure. [REDACTED]

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15           259. Lamego and O'Reilly used and disclosed Plaintiffs' Confidential  
16 Information without Plaintiffs' consent. At the time of the use and disclosure,  
17 Lamego and O'Reilly knew, or had reason to know, that their knowledge of  
18 Plaintiffs' Confidential Information was acquired by an employer-employee  
19 relationship, fiduciary relationship, and employment agreements, which created a  
20 duty for them to keep Plaintiffs' Confidential Information secret. Lamego and  
21 O'Reilly also knew, or had reason to know, that using and disclosing Plaintiffs'  
22 Confidential Information to Defendant constituted a breach of those obligations.  
23 Accordingly, Lamego and O'Reilly each misappropriated Plaintiffs' Confidential  
24 Information through use and disclosure while employed by Apple.

25           260. Upon information and belief, Defendant is liable for its employees'  
26 use and disclosure of Plaintiffs' Confidential Information under the doctrine of  
27 respondeat superior because its employees acted within the scope of their  
28 employment, for the benefit of Defendant, and in a manner that was generally

1 foreseeable as part of their duties. For example, Defendant hired O'Reilly and  
2 assigned him to help develop Defendant's relationships with clinicians and  
3 strategic plans for clinical monitoring. Apple's Chief Executive Officer, Tim  
4 Cook, interviewed O'Reilly. Defendant hired O'Reilly to oversee Apple's  
5 strategic objective in healthcare and gave him the title of Apple's Vice President  
6 of Medical Technology. In this position, O'Reilly inquired whether Cercacor was  
7 for sale. When O'Reilly was informed that Cercacor was not for sale, Defendant  
8 recruited Cercacor's Chief Technical Officer, Marcelo Lamego. Defendant  
9 assigned Lamego to help develop Defendant's non-invasive monitoring  
10 technology, quickly obtained patent disclosures from him, and then applied for  
11 numerous patents listing Lamego as an inventor. [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED] Apple had Lamego work on the Apple Watch project  
17 and tasked him with producing key intellectual property related to bio-sensing,  
18 defining required resources for current and future bio-sensing functionalities,  
19 proposing and reviewing hardware and algorithm architectures, and advising  
20 Apple's team regarding bio-sensing functionalities. Because Plaintiffs' have  
21 leading technology, Apple provided substantial financial incentives to entice  
22 O'Reilly, Lamego, and others to help Apple in its strategic objective in healthcare,  
23 expecting them to use the specialized knowledge obtained from Plaintiffs.  
24 O'Reilly later informed Plaintiffs that, although he viewed Masimo as his family,  
25 Apple had offered him so much money that he simply could not refuse.  
26 Defendant knew or should have known that those incentives, as well as the  
27 expectations that they had specialized knowledge from Plaintiffs, would cause  
28

1 O'Reilly, Lamego, and others to use and disclosure of Plaintiffs' Confidential  
2 Information.

3 261. Accordingly, the former employees used and disclosed Plaintiffs'  
4 Confidential Information within the scope of their employment for Defendant and  
5 for the benefit of Defendant. As discussed above, the former employees knew or  
6 had reason to know that their knowledge of Plaintiffs' Confidential Information  
7 was acquired under circumstances giving rise to a duty to maintain its secrecy and  
8 limit its use. O'Reilly's actions were an outgrowth of his employment and  
9 inherent in the working environment because Defendant assigned O'Reilly to  
10 develop Defendant's relationships with clinicians and strategic plans for clinical  
11 monitoring. Lamego's actions were an outgrowth of his employment and inherent  
12 in the working environment because Defendant assigned Lamego to help develop  
13 Defendant's non-invasive monitoring technology and provide patent disclosures.  
14 O'Reilly and Lamego's actions were at least typical or broadly incidental to  
15 Defendant's business of developing non-invasive monitoring technology, filing  
16 patents on such technology, developing relationships with clinicians, and  
17 developing strategic plans for clinical monitoring. O'Reilly and Lamego's actions  
18 were at least generally foreseeable as part of their duties to develop non-invasive  
19 monitoring technology, provide patent disclosures, develop relationships with  
20 clinicians, and develop strategic plans for clinical monitoring. As a result,  
21 Defendant is liable for its employees' actions under the doctrine of respondeat  
22 superior.

23 262. Plaintiffs had no way of knowing, or learning, of Defendant's and its  
24 employees' improper acquisition, use, or disclosure prior to January 10, 2017.  
25 Defendant did not publish Plaintiffs' Confidential Information in patent  
26 applications until after January 10, 2017, and the first product at issue was not  
27 announced until 2018. Additionally, based at least on Plaintiffs' conversations  
28 with Lamego, Plaintiffs' letter to Apple, and Plaintiffs' confidentiality



1 agreement with Apple, Plaintiffs had no reason to suspect or believe that  
2 Defendant had ignored Plaintiffs' letter and improperly acquired, used, and  
3 disclosed Plaintiffs' Confidential Information until after Plaintiffs discovered  
4 patent applications published after January 10, 2017, and accused products  
5 announced in 2018. In September 2020, Apple announced partnerships with  
6 three of the health care systems that Plaintiffs were cultivating and targeting for  
7 research collaborations on patient health parameter measurements.

8 263. Defendant and the former employees also led Plaintiffs to believe  
9 they intended to respect Plaintiffs' intellectual property rights and concealed  
10 Defendant's and its employees' acquisition, use, and disclosure of Plaintiffs'  
11 Confidential Information. After O'Reilly left Masimo, he assured Plaintiffs that  
12 he and Apple were not and would not be competing against Plaintiffs. Similarly,  
13 when Lamego left Cercacor, he assured Plaintiffs that he would not violate his  
14 agreements with Plaintiffs and volunteered that he would not work on  
15 technology similar to Plaintiffs' technology. Plaintiffs notified Defendant that  
16 Lamego possessed the Confidential Information on January 24, 2014. Defendant  
17 never informed Plaintiffs that Lamego or O'Reilly had used or disclosed the  
18 Confidential Information. Defendant also requested non-publication of patent  
19 applications, which prevented Plaintiffs from learning of the contents of those  
20 applications until much later. For example, Defendant requested non-  
21 publication of the '268 Application (which issued as the '754 Patent), the '422  
22 Application (which issued as the '997 Patent), and the '664 Application (which  
23 issued as the '095 Patent). On information and belief, Defendant requested non-  
24 publication of those applications to prevent Plaintiffs from learning those  
25 applications contained Plaintiffs' Confidential Information, and from learning  
26 the Defendant had acquired, used and disclosed Plaintiffs' Confidential  
27 Information. On information and belief, Defendant does not normally request  
28



1 non-publication of patent applications and, instead, allows the vast majority of  
2 its patent applications to publish in the ordinary course.

3 264. Plaintiffs were harmed by Defendant's and its employees'  
4 acquisition, use, and disclosure of Plaintiffs' Confidential Information, and  
5 Defendant's and its employees' actions were substantial factors in causing  
6 Plaintiffs' harm. As a direct and proximate result of Defendant's and its  
7 employees' willful, improper, and unlawful acquisition, use, and disclosure of  
8 Plaintiffs' trade secrets, Plaintiffs have suffered, and will continue to suffer, great  
9 harm and damage. Plaintiffs will continue to be irreparably damaged unless  
10 Defendant is enjoined from further use and disclosure of Plaintiffs' Confidential  
11 Information.

12 265. Defendant and its employees were unjustly enriched by Defendant's  
13 acquisition, use, and disclosure of Plaintiffs' Confidential Information, and  
14 Defendant's and its employees' actions were substantial factors in causing  
15 Defendant to be unjustly enriched. Defendant and its employees were unjustly  
16 enriched because its misappropriation of Plaintiffs' Confidential Information  
17 caused Defendant and its employees to receive a benefit that they otherwise would  
18 not have achieved.

19 266. If neither damages nor unjust enrichment caused by Defendant's and  
20 its employees' misappropriation of Plaintiffs' Confidential Information is provable  
21 at trial, Plaintiffs are entitled to a reasonable royalty for the period of time that  
22 Defendant's and its employees use of Plaintiffs' Confidential Information could  
23 have been prohibited.

24 267. The aforementioned acts of Defendant and its employees wrongfully  
25 misappropriating Plaintiffs' trade secrets were, and continue to be, willful and  
26 malicious, warranting an award of reasonable attorneys' fees, as provided by  
27 Cal. Civ. Code § 3426.4, and exemplary damages, as provided by Cal. Civ. Code  
28 §§ 3294 and 3426.3(c).

1                                    **XXI. FOURTEENTH CAUSE OF ACTION**  
2                                    **(CORRECTION OF INVENTORSHIP OF U.S. PATENT NO. 10,078,052)**

3                    268. Plaintiffs hereby reallege and incorporate by reference the  
4                    allegations set forth in paragraphs 1 through 50.

5                    269. Lamego is a named inventor of U.S. Patent 10,078,052 presently  
6                    recorded as owned by Apple.

7                    270. The '052 Patent claims subject matter that Lamego obtained from  
8                    discussions with, or jointly conceived with, Masimo employees. For example,  
9                    Claim 1 of the '052 Patent recites an electronic device comprising a housing  
10                  defining an aperture; an optical sensing system comprising a light emitter for  
11                  emitting light through the aperture, the light emitter positioned adjacent the  
12                  aperture; and a light detector for obtaining a first portion of the light after the  
13                  first portion of the light reflects from an object; and a reflector disposed about  
14                  the aperture and adapted to reflect a second portion of the light back into the  
15                  object after the second portion of the light reflects from the object. Lamego  
16                  obtained this subject matter from discussions with, or jointly conceived it with,  
17                  Diab. Accordingly, Diab is a joint inventor of any patentable subject matter  
18                  claimed in the '052 Patent, and should have been named as an inventor on the  
19                  '052 Patent.

20                  271. In written assignments, Lamego, as well as Diab, agreed to assign  
21                  and assigned to Masimo all patentable subject matter (as well as all works of  
22                  authorship, developments, improvements, or trade secrets) conceived during  
23                  their employment at Masimo, including ownership of all patents and patent  
24                  applications claiming such subject matter.

25                  272. Those assignments vested in Masimo all legal and equitable title to  
26                  all patents and patent applications reciting inventions made during their  
27                  employment, such that Masimo is at least a joint owner of the '052 Patent and  
28

1 Masimo has standing to seek correction of inventorship to perfect Masimo's  
2 ownership interest in the '052 Patent.

3 273. In at least one written assignment, Lamego agreed to assign and  
4 assigned to Cercacor all patentable subject matter (as well as all works of  
5 authorship, developments, improvements, or trade secrets) conceived during his  
6 employment at Cercacor, including ownership of all patents and patent  
7 applications claiming such subject matter. An exemplary agreement conveying  
8 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
9 16-3). Accordingly, to the extent the evidence establishes that Lamego obtained  
10 patentable subject matter claimed in the '052 Patent from, or jointly conceived  
11 such subject matter with, Masimo employees while Lamego was an employee of  
12 Cercacor, Cercacor would be a joint owner of the '052 Patent and has standing  
13 to seek correction of inventorship to perfect Cercacor's ownership interest in the  
14 '052 Patent.

15 274. Pursuant to 28 U.S.C. § 2201 and 35 U.S.C. § 256, Plaintiffs seek  
16 an order directing the U.S. Patent and Trademark Office to correct the  
17 inventorship of the '052 Patent by adding inventor Diab as a named inventor.

18 **XXII. FIFTEENTH CAUSE OF ACTION**

19 **(CORRECTION OF INVENTORSHIP OF U.S. PATENT NO. 10,247,670)**

20 275. Plaintiffs hereby reallege and incorporate by reference the  
21 allegations set forth in paragraphs 1 through 50.

22 276. Lamego is a named inventor of U.S. Patent 10,247,670 presently  
23 recorded as owned by Apple.

24 277. The '670 Patent claims subject matter that Lamego obtained from  
25 discussions with, or jointly conceived with, Masimo employees. For example,  
26 Claim 1 of the '670 Patent recites an electronic device comprising a housing  
27 with a surface; a reflective layer that is formed on the surface, wherein the  
28 reflective layer has first and second openings; a light emitter that emits light

1 through the first opening; and a light detector that receives the light emitted by  
2 the light emitter through the second opening. Lamego obtained this subject  
3 matter from discussions with, or jointly conceived it with, Diab. Accordingly,  
4 Diab is a joint inventor of any patentable subject matter claimed in the  
5 '670 Patent, and should have been named as an inventor on the '670 Patent.

6 278. In written assignments, Lamego, as well as Diab, agreed to assign  
7 and assigned to Masimo all patentable subject matter (as well as all works of  
8 authorship, developments, improvements, or trade secrets) conceived during  
9 their employment at Masimo, including ownership of all patents and patent  
10 applications claiming such subject matter.

11 279. Those assignments vested in Masimo all legal and equitable title to  
12 all patents and patent applications reciting inventions made during their  
13 employment, such that Masimo is at least a joint owner of the '670 Patent and  
14 Masimo has standing to seek correction of inventorship to perfect Masimo's  
15 ownership interest in the '670 Patent.

16 280. In at least one written assignment, Lamego agreed to assign and  
17 assigned to Cercacor all patentable subject matter (as well as all works of  
18 authorship, developments, improvements, or trade secrets) conceived during his  
19 employment at Cercacor, including ownership of all patents and patent  
20 applications claiming such subject matter. An exemplary agreement conveying  
21 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
22 16-3). Accordingly, to the extent the evidence establishes that Lamego obtained  
23 patentable subject matter claimed in the '670 Patent from, or jointly conceived  
24 such subject matter with, Masimo employees while Lamego was an employee of  
25 Cercacor, Cercacor would be a joint owner of the '670 Patent and has standing  
26 to seek correction of inventorship to perfect Cercacor's ownership interest in the  
27 '670 Patent.

1           281. Pursuant to 28 U.S.C. § 2201 and 35 U.S.C. § 256, Plaintiffs seek  
2 an order directing the U.S. Patent and Trademark Office to correct the  
3 inventorship of the '670 Patent by adding inventor Diab as a named inventors.

4                           **XXIII. SIXTEENTH CAUSE OF ACTION**  
5                           **(CORRECTION OF INVENTORSHIP OF U.S. PATENT NO. 9,952,095)**

6           282. Plaintiffs hereby reallege and incorporate by reference the  
7 allegations set forth in paragraphs 1 through 50.

8           283. Lamego is a named inventor of U.S. Patent 9,952,095 presently  
9 recorded as owned by Apple.

10           284. The '095 Patent claims subject matter that Lamego obtained from  
11 discussions with, or jointly conceived with, Masimo employees. For example,  
12 Claim 1 of the '095 Patent recites an electronic device comprising a housing  
13 comprising a surface adapted to be positioned proximate a measurement site of  
14 a subject; a biometric sensor positioned at least partially within the surface and  
15 comprising: a plurality of light sources for emitting light toward the  
16 measurement site at a selected modulation frequency; and an optical sensor for  
17 obtaining light exiting the measurement site; and an input amplifier coupled to  
18 the output of the biometric sensor and disposed within the housing; a high pass  
19 filter coupled to an output of the input amplifier and disposed within the  
20 housing, the high pass filter having a cutoff frequency above that of a periodic  
21 biometric property of the measurement site; an output amplifier coupled to an  
22 output of the high pass filter and disposed within the housing; and an analog to  
23 digital converter coupled to an output of the output amplifier and disposed  
24 within the housing. Lamego obtained this subject matter from discussions with,  
25 or jointly conceived it with, Diab. Accordingly, Diab is a joint inventor of any  
26 patentable subject matter claimed in the '095 Patent, and should have been  
27 named as an inventor on the '095 Patent.

1           285. In written assignments, Lamego, as well as Diab, agreed to assign  
2 and assigned to Masimo all patentable subject matter (as well as all works of  
3 authorship, developments, improvements, or trade secrets) conceived during  
4 their employment at Masimo, including ownership of all patents and patent  
5 applications claiming such subject matter.

6           286. Those assignments vested in Masimo all legal and equitable title to  
7 all patents and patent applications reciting inventions made during their  
8 employment, such that Masimo is at least a joint owner of the '095 Patent and  
9 Masimo has standing to seek correction of inventorship to perfect Masimo's  
10 ownership interest in the '095 Patent.

11           287. In at least one written assignment, Lamego agreed to assign and  
12 assigned to Cercacor all patentable subject matter (as well as all works of  
13 authorship, developments, improvements, or trade secrets) conceived during his  
14 employment at Cercacor, including ownership of all patents and patent  
15 applications claiming such subject matter. An exemplary agreement conveying  
16 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
17 16-3). Accordingly, to the extent the evidence establishes that Lamego obtained  
18 patentable subject matter claimed in the '095 Patent from, or jointly conceived  
19 such subject matter with, Masimo employees while Lamego was an employee of  
20 Cercacor, Cercacor would be a joint owner of the '095 Patent and has standing  
21 to seek correction of inventorship to perfect Cercacor's ownership interest in the  
22 '095 Patent.

23           288. Pursuant to 28 U.S.C. § 2201 and 35 U.S.C. § 256, Plaintiffs seek  
24 an order directing the U.S. Patent and Trademark Office to correct the  
25 inventorship of the '095 Patent by adding inventor Diab as a named inventor.  
26  
27  
28

1 **XXIV. SEVENTEENTH CAUSE OF ACTION**  
2 **(CORRECTION OF INVENTORSHIP OF U.S. PATENT NO. 10,219,754)**

3 289. Plaintiffs hereby reallege and incorporate by reference the  
4 allegations set forth in paragraphs 1 through 50.

5 290. Lamego is a named inventor of U.S. Patent 10,219,754 presently  
6 recorded as owned by Apple.

7 291. The '754 Patent claims subject matter that Lamego obtained from  
8 discussions with, or jointly conceived with, Masimo employees. For example,  
9 Claim 1 of the '754 Patent recites a method for estimating physiological  
10 parameters when modulated light from a first light source and a second light  
11 source is emitted toward a body part of a user, the method comprising  
12 determining a first multiplier value by: turning on the first light source;  
13 generating a first initial signal in response to capturing a first light sample  
14 corresponding to the first light source; demodulating the first initial signal to  
15 produce first initial demodulated signals; filtering and decimating the first initial  
16 demodulated signals; and determining the first multiplier value based on the  
17 filtered and decimated first initial demodulated signals; determining a second  
18 multiplier value by: turning on the second light source; generating a second  
19 initial signal in response to capturing a second light sample corresponding to the  
20 second light source; demodulating the second initial signal to produce second  
21 initial demodulated signals; filtering and decimating the second initial  
22 demodulated signals; and determining the second multiplier value based on the  
23 filtered and decimated second initial demodulated signals; capturing multiple  
24 light samples while the first light source and the second light source are turned  
25 on to emit modulated light toward the body part of the user and converting the  
26 multiple light samples into a captured signal; demodulating the captured signal  
27 to produce multiple demodulated signals; performing a first decimation stage  
28 by: low pass filtering each demodulated signal; and decimating each



1 demodulated signal; performing a second decimation stage after the first  
2 decimation stage by: low pass filtering each demodulated signal; and decimating  
3 each demodulated signal; demultiplexing each demodulated signal after the  
4 second decimation stage to produce a first signal associated with the first light  
5 source and a second signal associated with the second light source; multiplying  
6 the first signal by the first multiplier value using a first multiplier circuit to  
7 obtain a first conditioned signal; multiplying the second signal by the second  
8 multiplier value using a second multiplier circuit to obtain a second conditioned  
9 signal; and analyzing the first conditioned signal and the second conditioned  
10 signal to estimate the physiological parameter of the user. Lamego obtained this  
11 subject matter from discussions with, or jointly conceived it with, Al-Ali, Diab,  
12 and Weber. Accordingly, Al-Ali, Diab, and Weber are joint inventors of any  
13 patentable subject matter claimed in the '754 Patent, and should have been  
14 named as inventors on the '754 Patent.

15 292. In written assignments, Lamego, as well as Al-Ali, Diab, and  
16 Weber, agreed to assign and assigned to Masimo all patentable subject matter  
17 (as well as all works of authorship, developments, improvements, or trade  
18 secrets) conceived during their employment at Masimo, including ownership of  
19 all patents and patent applications claiming such subject matter.

20 293. Those assignments vested in Masimo all legal and equitable title to  
21 all patents and patent applications reciting inventions made during their  
22 employment, such that Masimo is at least a joint owner of the '754 Patent and  
23 Masimo has standing to seek correction of inventorship to perfect Masimo's  
24 ownership interest in the '754 Patent.

25 294. In at least one written assignment, Lamego agreed to assign and  
26 assigned to Cercacor all patentable subject matter (as well as all works of  
27 authorship, developments, improvements, or trade secrets) conceived during his  
28 employment at Cercacor, including ownership of all patents and patent



1 applications claiming such subject matter. An exemplary agreement conveying  
2 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
3 16-3). Accordingly, to the extent the evidence establishes that Lamego obtained  
4 patentable subject matter claimed in the '754 Patent from, or jointly conceived  
5 such subject matter with, Masimo employees while Lamego was an employee of  
6 Cercacor, Cercacor would be a joint owner of the '754 Patent and has standing  
7 to seek correction of inventorship to perfect Cercacor's ownership interest in the  
8 '754 Patent.

9 295. Pursuant to 28 U.S.C. § 2201 and 35 U.S.C. § 256, Plaintiffs seek  
10 an order directing the U.S. Patent and Trademark Office to correct the  
11 inventorship of the '754 Patent by adding inventors Al-Ali, Diab, and Weber as  
12 named inventors.

13 **XXV. EIGHTEENTH CAUSE OF ACTION**  
14 **(CORRECTION OF INVENTORSHIP OF U.S. PATENT NO. 9,723,997)**

15 296. Plaintiffs hereby reallege and incorporate by reference the  
16 allegations set forth in paragraphs 1 through 50.

17 297. Lamego is a named inventor of U.S. Patent 9,723,997 presently  
18 recorded as owned by Apple.

19 298. The '997 Patent claims subject matter that Lamego obtained from  
20 discussions with, or jointly conceived with, Cercacor employees. For example,  
21 Claim 20 of the '997 Patent recites a method for using a mobile personal  
22 computing device to obtain health data, comprising using a camera and a  
23 proximity sensor to emit light into a body part of a user touching a surface of the  
24 mobile personal computing device; using at least two of the camera, an ambient  
25 light sensor, or the proximity sensor to receive at least part of the emitted light  
26 reflected by the body part of the user and generate sensor data; and computing  
27 health data of the user, utilizing the processing unit, using at least the sensor  
28 data regarding the received light. Lamego obtained this subject matter from

1 discussions with, or jointly conceived it with, Greg Olsen. Accordingly, Olsen  
2 is a joint inventor of any patentable subject matter claimed in the '997 Patent,  
3 and should have been named as an inventor on the '997 Patent.

4 299. In written assignments, Lamego, as well as Olsen, agreed to assign  
5 and assigned to Cercacor all patentable subject matter (as well as all works of  
6 authorship, developments, improvements, or trade secrets) conceived during  
7 their employment at Cercacor, including ownership of all patents and patent  
8 applications claiming such subject matter. An exemplary agreement conveying  
9 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
10 16-3).

11 300. Those assignments vested in Cercacor all legal and equitable title  
12 to all patents and patent applications reciting inventions made during their  
13 employment, such that Cercacor is at least a joint owner of the '997 Patent and  
14 Cercacor has standing to seek correction of inventorship to perfect Cercacor's  
15 ownership interest in the '997 Patent.

16 301. In at least one written assignment, Lamego agreed to assign and  
17 assigned to Masimo all patentable subject matter (as well as all works of  
18 authorship, developments, improvements, or trade secrets) conceived during his  
19 employment at Masimo, including ownership of all patents and patent  
20 applications claiming such subject matter. Accordingly, to the extent the  
21 evidence establishes that Lamego obtained patentable subject matter claimed in  
22 the '997 Patent from, or jointly conceived such subject matter with, Masimo  
23 employees while Lamego was an employee of Masimo, Masimo would be a  
24 joint owner of the '997 Patent and has standing to seek correction of  
25 inventorship to perfect Masimo's ownership interest in the '997 Patent.

26 302. Pursuant to 28 U.S.C. § 2201 and 35 U.S.C. § 256, Plaintiffs seek  
27 an order directing the U.S. Patent and Trademark Office to correct the  
28 inventorship of the '997 Patent by adding inventor Olsen as a named inventor.

1 **XXVI. NINETEENTH CAUSE OF ACTION**  
2 **(CORRECTION OF INVENTORSHIP OF U.S. PATENT NO. 10,524,671)**

3 303. Plaintiffs hereby reallege and incorporate by reference the  
4 allegations set forth in paragraphs 1 through 50.

5 304. Lamego is a named inventor of U.S. Patent 10,524,671 presently  
6 recorded as owned by Apple.

7 305. The '671 Patent claims subject matter that Lamego obtained from  
8 discussions with, or jointly conceived with, Masimo employees. For example,  
9 Claim 1 of the '671 Patent recites a wearable device, comprising a first light  
10 source; a second light source, the second light source operating at a different  
11 wavelength than the first light source; at least one light receiver; and a  
12 processing unit communicably coupled to the first light source, the second light  
13 source, and the at least one light receiver; wherein the processing unit is  
14 configured to: use the first light source and the second light source to emit light  
15 into a body part of a user; and dependent on the light emitted by the first light  
16 source and received by the at least one light receiver, compute a pulse rate of the  
17 user using the light emitted by the second light source and received by the at  
18 least one light receiver. Lamego obtained this subject matter from discussions  
19 with, or jointly conceived it with, Diab. Accordingly, Diab is a joint inventor of  
20 any patentable subject matter claimed in the '671 Patent, and should have been  
21 named as an inventor on the '671 Patent.

22 306. In written assignments, Lamego, as well as Diab, agreed to assign  
23 and assigned to Masimo all patentable subject matter (as well as all works of  
24 authorship, developments, improvements, or trade secrets) conceived during  
25 their employment at Masimo, including ownership of all patents and patent  
26 applications claiming such subject matter.

27 307. Those assignments vested in Masimo all legal and equitable title to  
28 all patents and patent applications reciting inventions made during their

1 employment, such that Masimo is at least a joint owner of the '671 Patent and  
2 Masimo has standing to seek correction of inventorship to perfect Masimo's  
3 ownership interest in the '671 Patent.

4 308. In at least one written assignment, Lamego agreed to assign and  
5 assigned to Cercacor all patentable subject matter (as well as all works of  
6 authorship, developments, improvements, or trade secrets) conceived during his  
7 employment at Cercacor, including ownership of all patents and patent  
8 applications claiming such subject matter. An exemplary agreement conveying  
9 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
10 16-3). Accordingly, to the extent the evidence establishes that Lamego obtained  
11 patentable subject matter claimed in the '671 Patent from, or jointly conceived  
12 such subject matter with, Masimo employees while Lamego was an employee of  
13 Cercacor, Cercacor would be a joint owner of the '671 Patent and has standing  
14 to seek correction of inventorship to perfect Cercacor's ownership interest in the  
15 '671 Patent.

16 309. Pursuant to 28 U.S.C. § 2201 and 35 U.S.C. § 256, Plaintiffs seek  
17 an order directing the U.S. Patent and Trademark Office to correct the  
18 inventorship of the '671 Patent by adding inventor Diab as a named inventor.

19 **XXVII. TWENTIETH CAUSE OF ACTION**  
20 **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
21 **U.S. PATENT NO. 10,078,052)**

22 310. Plaintiffs hereby reallege and incorporate by reference the  
23 allegations set forth in paragraphs 1 through 50.

24 311. U.S. Patent 10,078,052 is recorded as owned by Apple.

25 312. The '052 Patent claims subject matter that Lamego obtained from  
26 discussions with, or jointly conceived with, Masimo employees. For example,  
27 Claim 1 of the '052 Patent recites an electronic device comprising a housing  
28 defining an aperture; an optical sensing system comprising a light emitter for

1 emitting light through the aperture, the light emitter positioned adjacent the  
2 aperture; and a light detector for obtaining a first portion of the light after the  
3 first portion of the light reflects from an object; and a reflector disposed about  
4 the aperture and adapted to reflect a second portion of the light back into the  
5 object after the second portion of the light reflects from the object. Lamego  
6 obtained this subject matter from discussions with, or jointly conceived it with  
7 Diab. Accordingly, Diab is a joint inventor of any patentable subject matter  
8 claimed in the '052 Patent, and should have been named as an inventor on the  
9 '052 Patent

10 313. Lamego and Diab made any inventive contributions to at least Claim  
11 1 while they were employees of Masimo.

12 314. In written assignments, Lamego, as well as Diab, agreed to assign  
13 and assigned to Masimo all patentable subject matter (as well as all works of  
14 authorship, developments, improvements, or trade secrets) conceived during  
15 their employment at Masimo, including ownership of all patents and patent  
16 applications claiming such subject matter.

17 315. Those assignments vested in Masimo all legal and equitable title to  
18 patents and patent applications reciting inventions made during their  
19 employment, such that Masimo is at least a joint owner of the '052 Patent and  
20 all applications, patents, continuations, divisionals, and reissues that claim priority  
21 to the '052 Patent, including foreign counterparts.

22 316. In at least one written assignment, Lamego agreed to assign and  
23 assigned to Cercacor all patentable subject matter (as well as all works of  
24 authorship, developments, improvements, or trade secrets) conceived during his  
25 employment at Cercacor, including ownership of all patents and patent  
26 applications claiming such subject matter. An exemplary agreement conveying  
27 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
28 16-3). That assignment vested in Cercacor all legal and equitable title to patents

1 and patent applications reciting inventions made during his employment, such  
2 that, to the extent the evidence establishes that Lamego obtained patentable  
3 subject matter claimed in the '052 Patent from, or jointly conceived such subject  
4 matter with, Cercacor employees while Lamego was an employee of Cercacor,  
5 Cercacor would be a joint owner of the '052 Patent and all applications, patents,  
6 continuations, divisionals, and reissues that claim priority to the '052 Patent,  
7 including foreign counterparts.

8 317. Based on the forgoing, Plaintiffs seek declaratory relief under at  
9 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and  
10 federal patent law, declaring that Masimo is at least a joint owner of the '052  
11 Patent (or, to the extent it is determined that Masimo employees invented all of  
12 the patentable subject matter claimed in the '052 Patent, that Masimo is the  
13 exclusive owner), and, in the alternative, that Cercacor is a joint owner of the  
14 '052 Patent. Plaintiffs also seek an order from the Court directing the Patent  
15 Office to amend the Patent Office records to reflect the ownership interest of  
16 Masimo and/or Cercacor.

17 **XXVIII. TWENTY-FIRST CAUSE OF ACTION**  
18 **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
19 **U.S. PATENT NO. 10,247,670)**

20 318. Plaintiffs hereby reallege and incorporate by reference the  
21 allegations set forth in paragraphs 1 through 50.

22 319. U.S. Patent 10,247,670 is recorded as owned by Apple.

23 320. The '670 Patent claims subject matter that Lamego obtained from  
24 discussions with, or jointly conceived with, Masimo employees. For example,  
25 Claim 1 of the '670 Patent recites an electronic device comprising a housing  
26 with a surface; a reflective layer that is formed on the surface, wherein the  
27 reflective layer has first and second openings; a light emitter that emits light  
28 through the first opening; and a light detector that receives the light emitted by

1 the light emitter through the second opening. Lamego obtained this subject  
2 matter from discussions with, or jointly conceived it with, Diab. Accordingly,  
3 Diab is a joint inventor of any patentable subject matter claimed in the  
4 '670 Patent, and should have been named as an inventor on the '670 Patent.

5 321. Lamego and Diab made any inventive contributions to at least Claim  
6 1 while they were employees of Masimo.

7 322. In written assignments, Lamego, as well as Diab, agreed to assign  
8 and assigned to Masimo all patentable subject matter (as well as all works of  
9 authorship, developments, improvements, or trade secrets) conceived during  
10 their employment at Masimo, including ownership of all patents and patent  
11 applications claiming such subject matter.

12 323. Those assignments vested in Masimo all legal and equitable title to  
13 patents and patent applications reciting inventions made during their  
14 employment, such that Masimo is at least a joint owner of the '670 Patent and  
15 all applications, patents, continuations, divisionals, and reissues that claim priority  
16 to the '670 Patent, including foreign counterparts.

17 324. In at least one written assignment, Lamego agreed to assign and  
18 assigned to Cercacor all patentable subject matter (as well as all works of  
19 authorship, developments, improvements, or trade secrets) conceived during his  
20 employment at Cercacor, including ownership of all patents and patent  
21 applications claiming such subject matter. An exemplary agreement conveying  
22 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
23 16-3). That assignment vested in Cercacor all legal and equitable title to patents  
24 and patent applications reciting inventions made during his employment, such  
25 that, to the extent the evidence establishes that Lamego obtained patentable  
26 subject matter claimed in the '670 Patent from, or jointly conceived such subject  
27 matter with, Cercacor employees while Lamego was an employee of Cercacor,  
28 Cercacor would be a joint owner of the '670 Patent and all applications, patents,



1 continuations, divisionals, and reissues that claim priority to the '670 Patent,  
2 including foreign counterparts.

3 325. Based on the forgoing, Plaintiffs seek declaratory relief under at  
4 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and  
5 federal patent law, declaring that Masimo is at least a joint owner of the '670  
6 Patent (or, to the extent it is determined that Masimo employees invented all of  
7 the patentable subject matter claimed in the '670 Patent, that Masimo is the  
8 exclusive owner), and, in the alternative, that Cercacor is a joint owner of the  
9 '670 Patent. Plaintiffs also seek an order from the Court directing the Patent  
10 Office to amend the Patent Office records to reflect the ownership interest of  
11 Masimo and/or Cercacor.

12 **XXIX. TWENTY-SECOND CAUSE OF ACTION**  
13 **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
14 **U.S. PATENT NO. 9,952,095)**

15 326. Plaintiffs hereby reallege and incorporate by reference the  
16 allegations set forth in paragraphs 1 through 50.

17 327. U.S. Patent 9,952,095 is recorded as owned by Apple.

18 328. The '095 Patent claims subject matter that Lamago obtained from  
19 discussions with, or jointly conceived with, Masimo employees. For example,  
20 Claim 1 of the '095 Patent recites an electronic device comprising a housing  
21 comprising a surface adapted to be positioned proximate a measurement site of  
22 a subject; a biometric sensor positioned at least partially within the surface and  
23 comprising: a plurality of light sources for emitting light toward the  
24 measurement site at a selected modulation frequency; and an optical sensor for  
25 obtaining light exiting the measurement site; and an input amplifier coupled to  
26 the output of the biometric sensor and disposed within the housing; a high pass  
27 filter coupled to an output of the input amplifier and disposed within the  
28 housing, the high pass filter having a cutoff frequency above that of a periodic



1 biometric property of the measurement site; an output amplifier coupled to an  
2 output of the high pass filter and disposed within the housing; and an analog to  
3 digital converter coupled to an output of the output amplifier and disposed  
4 within the housing. Lamego obtained this subject matter from discussions with,  
5 or jointly conceived it with, Diab. Accordingly, Diab is a joint inventor of any  
6 patentable subject matter claimed in the '095 Patent, and should have been  
7 named as an inventor on the '095 Patent.

8 329. Lamego and Diab made any inventive contributions to at least Claim  
9 1 while they were employees of Masimo.

10 330. In written assignments, Lamego, as well as Diab, agreed to assign  
11 and assigned to Masimo all patentable subject matter (as well as all works of  
12 authorship, developments, improvements, or trade secrets) conceived during  
13 their employment at Masimo, including ownership of all patents and patent  
14 applications claiming such subject matter.

15 331. Those assignments vested in Masimo all legal and equitable title to  
16 patents and patent applications reciting inventions made during their  
17 employment, such that Masimo is at least a joint owner of the '095 Patent and  
18 all applications, patents, continuations, divisionals, and reissues that claim priority  
19 to the '095 Patent, including foreign counterparts.

20 332. In at least one written assignment, Lamego agreed to assign and  
21 assigned to Cercacor all patentable subject matter (as well as all works of  
22 authorship, developments, improvements, or trade secrets) conceived during his  
23 employment at Cercacor, including ownership of all patents and patent  
24 applications claiming such subject matter. An exemplary agreement conveying  
25 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
26 16-3). That assignment vested in Cercacor all legal and equitable title to patents  
27 and patent applications reciting inventions made during his employment, such  
28 that, to the extent the evidence establishes that Lamego obtained patentable

1 subject matter claimed in the '095 Patent from, or jointly conceived such subject  
2 matter with, Cercacor employees while Lamego was an employee of Cercacor,  
3 Cercacor would be a joint owner of the '095 Patent and all applications, patents,  
4 continuations, divisionals, and reissues that claim priority to the '095 Patent,  
5 including foreign counterparts.

6 333. Based on the forgoing, Plaintiffs seek declaratory relief under at  
7 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and  
8 federal patent law, declaring that Masimo is at least a joint owner of the '095  
9 Patent (or, to the extent it is determined that Masimo employees invented all of  
10 the patentable subject matter claimed in the '095 Patent, that Masimo is the  
11 exclusive owner), and, in the alternative, that Cercacor is a joint owner of the  
12 '095 Patent. Plaintiffs also seek an order from the Court directing the Patent  
13 Office to amend the Patent Office records to reflect the ownership interest of  
14 Masimo and/or Cercacor.

15 **XXX. TWENTY-THIRD CAUSE OF ACTION**  
16 **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
17 **U.S. PATENT NO. 10,219,754)**

18 334. Plaintiffs hereby reallege and incorporate by reference the  
19 allegations set forth in paragraphs 1 through 50.

20 335. U.S. Patent 10,219,754 is recorded as owned by Apple.

21 336. The '754 Patent claims subject matter that Lamego obtained from  
22 discussions with, or jointly conceived with, Masimo employees. For example,  
23 Claim 1 of the '754 Patent recites a method for estimating physiological  
24 parameters when modulated light from a first light source and a second light  
25 source is emitted toward a body part of a user, the method comprising  
26 determining a first multiplier value by: turning on the first light source;  
27 generating a first initial signal in response to capturing a first light sample  
28 corresponding to the first light source; demodulating the first initial signal to

1 produce first initial demodulated signals; filtering and decimating the first initial  
2 demodulated signals; and determining the first multiplier value based on the  
3 filtered and decimated first initial demodulated signals; determining a second  
4 multiplier value by: turning on the second light source; generating a second  
5 initial signal in response to capturing a second light sample corresponding to the  
6 second light source; demodulating the second initial signal to produce second  
7 initial demodulated signals; filtering and decimating the second initial  
8 demodulated signals; and determining the second multiplier value based on the  
9 filtered and decimated second initial demodulated signals; capturing multiple  
10 light samples while the first light source and the second light source are turned  
11 on to emit modulated light toward the body part of the user and converting the  
12 multiple light samples into a captured signal; demodulating the captured signal  
13 to produce multiple demodulated signals; performing a first decimation stage  
14 by: low pass filtering each demodulated signal; and decimating each  
15 demodulated signal; performing a second decimation stage after the first  
16 decimation stage by: low pass filtering each demodulated signal; and decimating  
17 each demodulated signal; demultiplexing each demodulated signal after the  
18 second decimation stage to produce a first signal associated with the first light  
19 source and a second signal associated with the second light source; multiplying  
20 the first signal by the first multiplier value using a first multiplier circuit to  
21 obtain a first conditioned signal; multiplying the second signal by the second  
22 multiplier value using a second multiplier circuit to obtain a second conditioned  
23 signal; and analyzing the first conditioned signal and the second conditioned  
24 signal to estimate the physiological parameter of the user. Lamago obtained this  
25 subject matter from discussions with, or jointly conceived it with, Al-Ali, Diab,  
26 and Weber. Accordingly, Al-Ali, Diab, and Weber are joint inventors of any  
27 patentable subject matter claimed in the '754 Patent, and should have been  
28 named as inventors on the '754 Patent.

1 337. Lamego, Al-Ali, Diab, and Weber made any inventive contributions  
2 to at least Claim 1 while they were employees of Masimo.

3 338. In written assignments, Lamego, Al-Ali, Diab, and Weber, agreed  
4 to assign and assigned to Masimo all patentable subject matter (as well as all  
5 works of authorship, developments, improvements, or trade secrets) conceived  
6 during their employment at Masimo, including ownership of all patents and  
7 patent applications claiming such subject matter.

8 339. Those assignments vested in Masimo all legal and equitable title to  
9 patents and patent applications reciting inventions made during their  
10 employment, such that Masimo is at least a joint owner of the '754 Patent and  
11 all applications, patents, continuations, divisionals, and reissues that claim priority  
12 to the '754 Patent, including foreign counterparts.

13 340. In at least one written assignment, Lamego agreed to assign and  
14 assigned to Cercacor all patentable subject matter (as well as all works of  
15 authorship, developments, improvements, or trade secrets) conceived during his  
16 employment at Cercacor, including ownership of all patents and patent  
17 applications claiming such subject matter. An exemplary agreement conveying  
18 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
19 16-3). That assignment vested in Cercacor all legal and equitable title to patents  
20 and patent applications reciting inventions made during his employment, such  
21 that, to the extent the evidence establishes that Lamego obtained patentable  
22 subject matter claimed in the '754 Patent from, or jointly conceived such subject  
23 matter with, Cercacor employees while Lamego was an employee of Cercacor,  
24 Cercacor would be a joint owner of the '754 Patent and all applications, patents,  
25 continuations, divisionals, and reissues that claim priority to the '754 Patent,  
26 including foreign counterparts.

27 341. Based on the forgoing, Plaintiffs seek declaratory relief under at  
28 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and

1 federal patent law, declaring that Masimo is at least a joint owner of the '754  
2 Patent (or, to the extent it is determined that Masimo employees invented all of  
3 the patentable subject matter claimed in the '754 Patent, that Masimo is the  
4 exclusive owner), and, in the alternative, that Cercacor is a joint owner of the  
5 '754 Patent. Plaintiffs also seek an order from the Court directing the Patent  
6 Office to amend the Patent Office records to reflect the ownership interest of  
7 Masimo and/or Cercacor.

8 **XXXI. TWENTY-FOURTH CAUSE OF ACTION**  
9 **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
10 **U.S. PATENT NO. 9,723,997)**

11 342. Plaintiffs hereby reallege and incorporate by reference the  
12 allegations set forth in paragraphs 1 through 50.

13 343. U.S. Patent 9,723,997 is recorded as owned by Apple.

14 344. The '997 Patent claims subject matter that Lamego obtained from  
15 discussions with, or jointly conceived with, Cercacor employees. For example,  
16 Claim 20 of the '997 Patent recites a method for using a mobile personal  
17 computing device to obtain health data, comprising using a camera and a  
18 proximity sensor to emit light into a body part of a user touching a surface of the  
19 mobile personal computing device; using at least two of the camera, an ambient  
20 light sensor, or the proximity sensor to receive at least part of the emitted light  
21 reflected by the body part of the user and generate sensor data; and computing  
22 health data of the user, utilizing the processing unit, using at least the sensor  
23 data regarding the received light. Lamego obtained this subject matter from  
24 discussions with, or jointly conceived it with, Greg Olsen. Accordingly, Olsen  
25 is a joint inventor of any patentable subject matter claimed in the '997 Patent,  
26 and should have been named as an inventor on the '997 Patent.

27 345. Lamego and Olsen made any inventive contributions to at least  
28 Claim 20 while they were employees of Cercacor.

1           346. In written assignments, Lamego, as well as Olsen, agreed to assign  
2 and assigned to Cercacor all patentable subject matter (as well as all works of  
3 authorship, developments, improvements, or trade secrets) conceived during  
4 their employment, including ownership of all patents and patent applications  
5 claiming such subject matter. An exemplary agreement conveying such rights  
6 was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No. 16-3).

7           347. Those assignments vested in Cercacor all legal and equitable title  
8 to patents and patent applications reciting inventions made during their  
9 employment, such that Cercacor is at least a joint owner of the '997 Patent and  
10 all applications, patents, continuations, divisionals, and reissues that claim priority  
11 to the '997 Patent, including foreign counterparts.

12           348. In at least one written assignment, Lamego agreed to assign and  
13 assigned to Masimo all patentable subject matter (as well as all works of  
14 authorship, developments, improvements, or trade secrets) conceived during his  
15 employment at Masimo, including ownership of all patents and patent  
16 applications claiming such subject matter. That assignment vested in Masimo  
17 all legal and equitable title to patents and patent applications reciting inventions  
18 made during his employment, such that, to the extent the evidence establishes  
19 that Lamego obtained patentable subject matter claimed in the '997 Patent from,  
20 or jointly conceived such subject matter with, Masimo employees while  
21 Lamego was an employee of Masimo, Masimo would be a joint owner of the  
22 '997 Patent and all applications, patents, continuations, divisionals, and reissues  
23 that claim priority to the '997 Patent, including foreign counterparts.

24           349. Based on the forgoing, Plaintiffs seek declaratory relief under at  
25 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and  
26 federal patent law, declaring that Cercacor is at least a joint owner of the '997  
27 Patent (or, to the extent it is determined that Cercacor employees invented all of  
28 the patentable subject matter claimed in the '997 Patent, that Cercacor is the

1 exclusive owner), and, in the alternative, that Masimo is a joint owner of the  
2 '997 Patent. Plaintiffs also seek an order from the Court directing the Patent  
3 Office to amend the Patent Office records to reflect the ownership interest of  
4 Cercacor and/or Masimo.

5 **XXXII. TWENTY-FIVE CAUSE OF ACTION**  
6 **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
7 **U.S. PATENT NO. 10,524,671)**

8 350. Plaintiffs hereby reallege and incorporate by reference the  
9 allegations set forth in paragraphs 1 through 50.

10 351. U.S. Patent 10,524,671 is recorded as owned by Apple.

11 352. The '671 Patent claims subject matter that Lamego obtained from  
12 discussions with, or jointly conceived with, Masimo employees. For example,  
13 Claim 1 of the '671 Patent recites a wearable device, comprising a first light  
14 source; a second light source, the second light source operating at a different  
15 wavelength than the first light source; at least one light receiver; and a  
16 processing unit communicably coupled to the first light source, the second light  
17 source, and the at least one light receiver; wherein the processing unit is  
18 configured to: use the first light source and the second light source to emit light  
19 into a body part of a user; and dependent on the light emitted by the first light  
20 source and received by the at least one light receiver, compute a pulse rate of the  
21 user using the light emitted by the second light source and received by the at  
22 least one light receiver. Lamego obtained this subject matter from discussions  
23 with, or jointly conceived it with, Diab. Accordingly, Diab is a joint inventor of  
24 any patentable subject matter claimed in the '671 Patent, and should have been  
25 named as an inventor on the '671 Patent.

26 353. Lamego and Diab made any inventive contributions to at least Claim  
27 1 while they were employees of Masimo.



1           354. In written assignments, Lamego, as well as Diab, agreed to assign  
2 and assigned to Masimo all patentable subject matter (as well as all works of  
3 authorship, developments, improvements, or trade secrets) conceived during  
4 their employment at Masimo, including ownership of all patents and patent  
5 applications claiming such subject matter.

6           355. Those assignments vested in Masimo all legal and equitable title to  
7 patents and patent applications reciting inventions made during their  
8 employment, such that Masimo is at least a joint owner of the '671 Patent and  
9 all applications, patents, continuations, divisionals, and reissues that claim priority  
10 to the '671 Patent, including foreign counterparts.

11           356. In at least one written assignment, Lamego agreed to assign and  
12 assigned to Cercacor all patentable subject matter (as well as all works of  
13 authorship, developments, improvements, or trade secrets) conceived during his  
14 employment at Cercacor, including ownership of all patents and patent  
15 applications claiming such subject matter. An exemplary agreement conveying  
16 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
17 16-3). That assignment vested in Cercacor all legal and equitable title to patents  
18 and patent applications reciting inventions made during his employment, such  
19 that, to the extent the evidence establishes that Lamego obtained patentable  
20 subject matter claimed in the '671 Patent from, or jointly conceived such subject  
21 matter with, Cercacor employees while Lamego was an employee of Cercacor,  
22 Cercacor would be a joint owner of the '671 Patent and all applications, patents,  
23 continuations, divisionals, and reissues that claim priority to the '671 Patent,  
24 including foreign counterparts.

25           357. Based on the forgoing, Plaintiffs seek declaratory relief under at  
26 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and  
27 federal patent law, declaring that Masimo is at least a joint owner of the '671  
28 Patent (or, to the extent it is determined that Masimo employees invented all of



1 the patentable subject matter claimed in the '671 Patent, that Masimo is the  
2 exclusive owner), and, in the alternative, that Cercacor is a joint owner of the  
3 '671 Patent. Plaintiffs also seek an order from the Court directing the Patent  
4 Office to amend the Patent Office records to reflect the ownership interest of  
5 Masimo and/or Cercacor.

6 **XXXIII. TWENTY-SIXTH CAUSE OF ACTION**  
7 **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
8 **U.S. PATENT APPLICATION NO. 15/960,507)**

9 358. Plaintiffs hereby reallege and incorporate by reference the  
10 allegations set forth in paragraphs 1 through 50.

11 359. U.S. Patent Application 15/960,507 is recorded as owned by Apple.

12 360. Any inventive contribution that Lamego could have made to the  
13 alleged invention of the subject matter claimed in the '507 application was made  
14 while he was a Masimo employee during 2000-2001 and 2003-2006, or a  
15 Cercacor employee during 2006-2014. This includes, for example, Claim 21 of  
16 the '507 Application, which recites “a biometric sensor within a housing of a  
17 wearable electronic device, the biometric sensor comprising: an emitter for  
18 transmitting modulated light toward a measurement site of a subject through a  
19 first aperture in the housing; an optical sensor for receiving modulated light  
20 through a second aperture in the housing, the modulated light at least partially  
21 exiting the measurement site; a high pass filter to receive an output of the  
22 optical sensor, the high pass filter having a cutoff frequency above a frequency  
23 of a periodic optical property of the measurement site; and an analog to digital  
24 converter to receive an output of the high pass filter.”

25 361. In written assignments, Lamego agreed to assign and assigned to  
26 Masimo all patentable subject matter (as well as all works of authorship,  
27 developments, improvements, or trade secrets) conceived during their  
28

1 employment at Masimo, including ownership of all patents and patent  
2 applications claiming such subject matter.

3 362. Those assignments vested in Masimo all legal and equitable title to  
4 patents and patent applications reciting inventions made during their  
5 employment, such that Masimo is at least a joint owner of the '507 Application  
6 and all applications, patents, continuations, divisionals, and reissues that claim  
7 priority to the '507 Application, including foreign counterparts.

8 363. In at least one written assignment, Lamego agreed to assign and  
9 assigned to Cercacor all patentable subject matter (as well as all works of  
10 authorship, developments, improvements, or trade secrets) conceived during his  
11 employment at Cercacor, including ownership of all patents and patent  
12 applications claiming such subject matter. An exemplary agreement conveying  
13 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
14 16-3). That assignment vested in Cercacor all legal and equitable title to patents  
15 and patent applications reciting inventions made during his employment, such  
16 that, to the extent the evidence establishes that Lamego obtained patentable  
17 subject matter claimed in the '507 Application from, or jointly conceived such  
18 subject matter with, Cercacor employees while Lamego was an employee of  
19 Cercacor, Cercacor would be a joint owner of the '507 Application and all  
20 applications, patents, continuations, divisionals, and reissues that claim priority to  
21 the '507 Application, including foreign counterparts.

22 364. Based on the forgoing, Plaintiffs seek declaratory relief under at  
23 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and  
24 federal patent law, declaring that Masimo is at least a joint owner of the '507  
25 Application (or, to the extent it is determined that Masimo employees invented  
26 all of the patentable subject matter claimed in the '507 Application, that Masimo  
27 is the exclusive owner), and, in the alternative, that Cercacor is a joint owner of  
28 the '507 Application. Plaintiffs also seek an order from the Court directing the

1 Patent Office to amend the Patent Office records to reflect the ownership  
2 interest of Masimo and/or Cercacor.

3 **XXXIV. TWENTY-SEVENTH CAUSE OF ACTION**  
4 **(DECLARATORY JUDGMENT OF OWNERSHIP OF**  
5 **U.S. PATENT APPLICATION NO. 16/700,710)**

6 365. Plaintiffs hereby reallege and incorporate by reference the  
7 allegations set forth in paragraphs 1 through 50.

8 366. U.S. Patent Application 16/700,710 is recorded as owned by Apple.

9 367. Any inventive contribution that Lamego could have made to the  
10 alleged invention of the subject matter claimed in the '710 application was made  
11 while he was a Masimo employee during 2000-2001 and 2003-2006, or a  
12 Cercacor employee during 2006-2014. This includes, for example, Claim 15 of  
13 the '710 Application, which recites "a wearable device, comprising: a first light  
14 source that operates at a first wavelength; a second light source that operates at a  
15 second wavelength; at least one light receiver; and a processing unit that is  
16 configured to, upon detection of an object using light of the first wavelength  
17 received by the at least one light receiver, use light of the second wavelength  
18 received by the at least one light receiver to determine health data for a user."

19 368. In written assignments, Lamego agreed to assign and assigned to  
20 Masimo all patentable subject matter (as well as all works of authorship,  
21 developments, improvements, or trade secrets) conceived during their  
22 employment at Masimo, including ownership of all patents and patent  
23 applications claiming such subject matter.

24 369. Those assignments vested in Masimo all legal and equitable title to  
25 patents and patent applications reciting inventions made during their  
26 employment, such that Masimo is at least a joint owner of the '710 Application  
27 and all applications, patents, continuations, divisionals, and reissues that claim  
28 priority to the ' 710 Application, including foreign counterparts.

1           370. In at least one written assignment, Lamego agreed to assign and  
2 assigned to Cercacor all patentable subject matter (as well as all works of  
3 authorship, developments, improvements, or trade secrets) conceived during his  
4 employment at Cercacor, including ownership of all patents and patent  
5 applications claiming such subject matter. An exemplary agreement conveying  
6 such rights was attached as Exhibit A to Apple's Motion to Dismiss (Doc. No.  
7 16-3). That assignment vested in Cercacor all legal and equitable title to patents  
8 and patent applications reciting inventions made during his employment, such  
9 that, to the extent the evidence establishes that Lamego obtained patentable  
10 subject matter claimed in the '710 Application from, or jointly conceived such  
11 subject matter with, Cercacor employees while Lamego was an employee of  
12 Cercacor, Cercacor would be a joint owner of the '710 Application and all  
13 applications, patents, continuations, divisionals, and reissues that claim priority to  
14 the '710 Application, including foreign counterparts.

15           371. Based on the forgoing, Plaintiffs seek declaratory relief under at  
16 least 28 U.S.C. §§ 2201 & 2202, as well as applicable state contract law and  
17 federal patent law, declaring that Masimo is at least a joint owner of the '710  
18 Application (or, to the extent it is determined that Masimo employees invented  
19 all of the patentable subject matter claimed in the '710 Application, that Masimo  
20 is the exclusive owner), and, in the alternative, that Cercacor is a joint owner of  
21 the '710 Application. Plaintiffs also seek an order from the Court directing the  
22 Patent Office to amend the Patent Office records to reflect the ownership  
23 interest of Masimo and/or Cercacor.

24                           **PRAYER FOR RELIEF**

25           **WHEREFORE**, Plaintiffs pray for judgment in their favor against  
26 Defendant for the following relief:

27           A. Pursuant to 35 U.S.C. § 271, a determination that Defendant and its  
28 officers, agents, servants, employees, attorneys and all others in active concert

1 and/or participation with them have infringed each of the '265, '628, '553, '554,  
2 '564, '765, '194, '195, '366, '994, '703, and '776 patents through the  
3 manufacture, use, importation, offer for sale, and/or sale of infringing products  
4 and/or any of the other acts prohibited by 35 U.S.C. § 271;

5 B. Pursuant to 35 U.S.C. § 283, an injunction enjoining Defendant and  
6 its officers, agents, servants, employees, attorneys and all others in active  
7 concert and/or participation with them from infringing the '265, '628, '553,  
8 '554, '564, '765, '194, '195, '366, '994, '703, and '776 patents through the  
9 manufacture, use, importation, offer for sale, and/or sale of infringing products  
10 and/or any of the other acts prohibited by 35 U.S.C. § 271, including  
11 preliminary and permanent injunctive relief;

12 C. Pursuant to 35 U.S.C. § 284, an award compensating Masimo for  
13 Defendant's infringement of the '265, '628, '553, '554, '564, '765, '194, '195,  
14 '366, '994, '703, and '776 patents through payment of not less than a reasonable  
15 royalty on Defendant's sales of infringing products;

16 D. Pursuant to 35 U.S.C. § 284, an award increasing damages up to  
17 three times the amount found or assessed by the jury for Defendant's  
18 infringement of each of the '265, '628, '553, '554, '564, '765, '194, '195, '366,  
19 '994, '703, and '776 patents in view of the willful and deliberate nature of the  
20 infringement;

21 E. Pursuant to 35 U.S.C. § 285, a finding that this is an exceptional  
22 case, and an award of reasonable attorneys' fees and non-taxable costs;

23 F. An assessment of prejudgment and post-judgment interest and  
24 costs against Defendant, together with an award of such interest and costs,  
25 pursuant to 35 U.S.C. § 284;

26 G. That Defendant be adjudged to have misappropriated Plaintiffs' trade  
27 secrets in violation of the California Uniform Trade Secrets Act, Cal. Civ. Code  
28

1 § 3426 *et seq.*, and that Defendant's acts in doing so be adjudged willful,  
2 malicious, oppressive, and done knowingly;

3 H. That Defendant be adjudged to have been unjustly enriched;

4 I. That Plaintiffs be awarded damages for actual losses, unjust  
5 enrichment, and/or a reasonable royalty pursuant to Cal. Civ. Code § 3426.3.

6 J. That Defendant, its agents, servants, employees, and attorneys, and  
7 all those persons in active concert or participation with Defendant, be forthwith  
8 temporarily, preliminarily, and thereafter permanently required to return all of  
9 Plaintiffs' trade secrets and confidential information and enjoined from further  
10 using and disclosing to any third parties any of Plaintiffs' trade secrets and  
11 confidential information;

12 K. That Defendant be enjoined from selling or offering to sell any  
13 product, including Defendant's Apple Watch Series 4 and later devices, that  
14 includes or uses any of Plaintiffs' trade secrets;

15 L. That Defendant be directed to file with this Court and to serve on  
16 Plaintiffs within thirty (30) days after the service of the injunction, a report in  
17 writing, under oath, setting forth in detail the manner and form in which  
18 Defendant has complied with the injunction;

19 M. That Defendant be required to account to Plaintiffs for any and all  
20 gains, profits, and advantages derived by it, and all damages sustained by  
21 Plaintiffs, by reason of Defendant's acts complained herein;

22 N. That Plaintiffs be awarded exemplary damages and reasonable  
23 attorneys' fees pursuant to Cal. Civ. Code § 3426.3(c) and 3426.4;

24 O. That the U.S. Patent and Trademark Office be directed to correct  
25 the inventorship of the '052, '670, '095, '754, '671, and '997 patents to add the  
26 correct inventors;

27 P. An order imposing a constructive trust for the benefit of Plaintiffs  
28 over: (1) any trade secrets Defendants obtained from Plaintiffs; (2) any profits,

1 revenues, or other benefits obtained by Defendants as a result of any disclosure  
2 or use of trade secrets obtained from Plaintiffs; and (3) the Lamego Patents and  
3 the Lamego Patent Applications;

4 Q. That Plaintiffs be declared exclusive owners, or at least joint owners,  
5 of the patents and patent applications that are based on Plaintiffs' developments,  
6 including the '052, '670, '095, '754, '671, and '997 patents, and the '507 and  
7 '710 applications, and all applications, patents, continuations, divisionals, and  
8 reissues that claim priority to those patents and that patent application, including  
9 foreign counterparts;

10 R. An award of taxable costs; and

11 S. That this Court award such other and further relief as this Court  
12 may deem just.

13  
14 Respectfully submitted,

15 KNOBBE, MARTENS, OLSON & BEAR, LLP

16 Dated: February 5, 2021

17 By: /s/ Adam B. Powell

18 Joseph R. Re  
19 Stephen C. Jensen  
20 Perry D. Oldham  
21 Stephen W. Larson  
22 Adam B. Powell

23  
24 Attorneys for Plaintiffs,  
25 Masimo Corporation and  
26 Cercacor Laboratories, Inc.  
27  
28

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs  
Masimo Corporation and Cercacor Laboratories, Inc. hereby demands a trial by  
jury on all issues so triable.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: February 5, 2021

By: /s/ Adam B. Powell

Joseph R. Re  
Stephen C. Jensen  
Perry D. Oldham  
Stephen W. Larson  
Adam B. Powell



Attorneys for Plaintiffs,  
Masimo Corporation and  
Cercacor Laboratories, Inc.

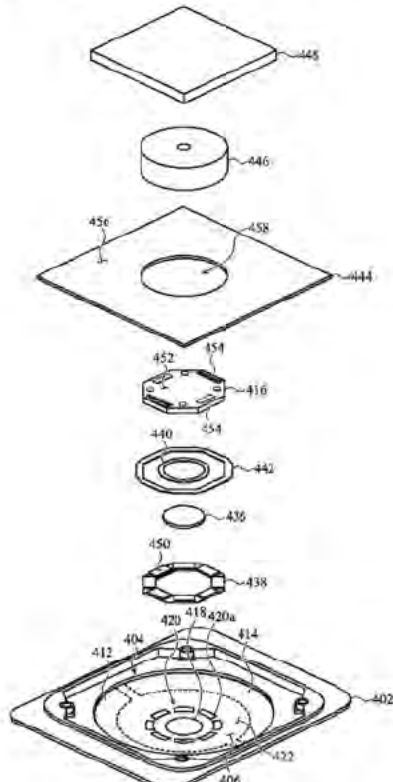
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# EXHIBIT 1

**U.S. Patent No. 10,258,265**

U.S. Patent No. 10,258,265 Claim 1	Description of Accused Products
<p>1. A noninvasive optical physiological measurement device adapted to be worn by a wearer, the noninvasive optical physiological measurement device providing an indication of a physiological parameter of the wearer comprising:</p>	<p>The Apple Watch Series 4 and later devices are noninvasive optical physiological measurement devices adapted to be worn by a wearer, and provide an indication of a physiological parameter as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The diagram shows the back of an Apple Watch Series 4 with labels for 'Photodiode sensors', 'Digital Crown electrode', 'Green LEDs', 'Back crystal electrode', and 'Infrared LEDs'. To the right, a smartphone displays a heart rate app with a graph showing heart rate over time, a 'Heart Rate' summary with a range of 43-163 bpm, and a 'Highlights' section showing a 'Resting Rate' of 55 bpm.</p> <p>The emitters and detectors are used to monitor physiological parameters, such as pulse rate. See <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>
<p>a plurality of emitters of different wavelengths;</p>	<p>The Apple Watch Series 4 and later devices include a plurality of emitters of different wavelengths. The Apple Watch Series 4 and later devices include green and infrared LEDs as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The diagram shows the back of an Apple Watch Series 4 with labels for 'Photodiode sensors', 'Digital Crown electrode', 'Green LEDs', 'Back crystal electrode', and 'Infrared LEDs'.</p>


U.S. Patent No. 10,258,265 Claim 1	Description of Accused Products
<p>a housing having a surface and a circular wall protruding from the surface;</p>	<p>The Apple Watch Series 4 and later devices include a housing having a surface and a circular wall protruding from the surface. Fig. 4C of Apple's U.S. Patent Application Publication 2019/0072912 (the '912 publication) is illustrative of the Apple Watch Series 4 and later devices. The Apple Watch Series 4 and later devices have, for example, a circular wall arranged on substrate:</p>  <p>The diagram illustrates an exploded view of a watch housing assembly. At the top is a rectangular plate (445). Below it is a circular ring (446). The next component is a square plate (444) with a central circular opening (458) and a smaller circular feature (456). Below this is a complex assembly of components including a ring (452), a central part (454), and a base (416). Further down is a ring (440) with a central part (442) and a small circular feature (436). Below that is a ring (450) with a central part (438). The bottom-most component is a large, complex assembly (402) with various internal features labeled 412, 404, 420, 418, 420a, 414, 422, and 406.</p> <p style="text-align: center;"><b>FIG. 4C</b></p>


U.S. Patent No. 10,258,265 Claim 1	Description of Accused Products
<p>at least four detectors arranged on the surface and spaced apart from each other, the at least four detectors configured to output one or more signals responsive to light from the one or more light emitters attenuated by body tissue, the one or more signals indicative of a physiological parameter of the wearer; and</p>	<p>The Apple Watch Series 4 and later devices include at least four detectors arranged on the surface and spaced apart from each other, the at least four detectors configured to output one or more signals responsive to light from the one or more light emitters attenuated by body tissue, the one or more signals indicative of a physiological parameter of the wearer. The Apple Watch Series 4 and later devices include eight photodiode sensors as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The Apple Watches Series 4 and later devices are worn on the wrist such that the detectors are configured to detect light that has passed through tissue and is indicative of a physiological parameter of the wearer:</p> <p>The optical heart sensor in Apple Watch uses what is known as photoplethysmography. This technology, while difficult to pronounce, is based on a very simple fact: Blood is red because it reflects red light and absorbs green light. Apple Watch uses green LED lights paired with light-sensitive photodiodes to detect the amount of blood flowing through your wrist at any given moment. When your heart beats, the blood flow in your wrist — and the green light absorption — is greater. Between beats, it's less. By flashing its LED lights hundreds of times per second, Apple Watch can calculate the number of times the heart beats each minute — your heart rate. The optical heart sensor supports a range of 30–210 beats per minute. In addition, the optical heart sensor is designed to compensate for low signal levels by increasing both LED brightness and sampling rate.</p> <p><a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>




U.S. Patent No. 10,258,265 Claim 1	Description of Accused Products
<p>a light permeable cover arranged above at least a portion of the housing, the light permeable cover comprising a protrusion arranged to cover the at least four detectors.</p>	<p>The Apple Watch Series 4 and later devices include a light permeable cover arranged above at least a portion of the housing, the light permeable cover comprising a protrusion arranged to cover the at least four detectors.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of the Apple Watch Series 4 and later devices. The Apple Watch Series 4 and later devices have, for example, a dome-shaped carrier having a surface that protrudes from the back of the watch. The dome-shaped carrier is arranged above at least a portion of the housing and is arranged to cover the at least four detectors:</p> <p style="text-align: center;">FIG. 4A</p> <p style="text-align: center;">FIG. 4C</p>

**U.S. Patent No. 10,292,628**

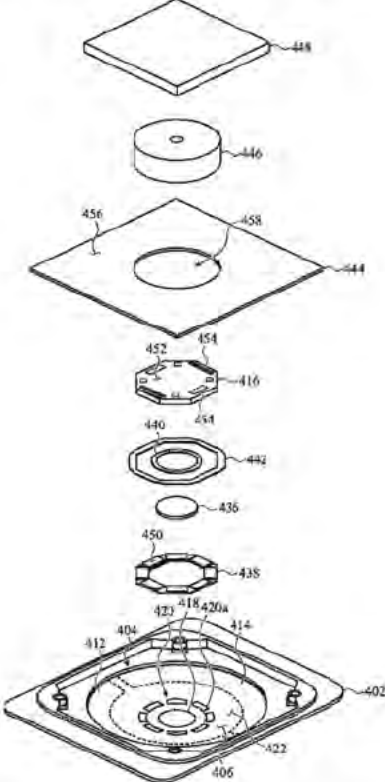
U.S. Patent No. 10,292,628 Claim 1	Description of Accused Products
<p>1. A noninvasive optical physiological sensor comprising:</p>	<p>The Apple Watch Series 4 and later devices are noninvasive optical physiological sensors.</p> <p>The Apple Watch Series 4 and later devices include a plurality of emitters of different wavelengths (for example, green and infrared LEDs) and at least four detectors (for example, photodiode sensors) spaced apart from each other as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The diagram shows the internal sensor layout of the Apple Watch Series 4. It features a central circular area labeled 'Photodiode sensor' surrounded by four 'Green LED' emitters and four 'Infrared LED' emitters. To the right of the diagram is a screenshot of the 'Heart Rate' app on an iPhone, displaying a heart rate range of 43-163 bpm and a graph of heart rate over time. Below the screenshot is an Apple Watch Series 4 with a red band, showing the 'Heart Rate' app on its screen with a reading of 55 bpm.</p> <p>The emitters and detectors are used to monitor physiological parameters, such as pulse rate. See <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>

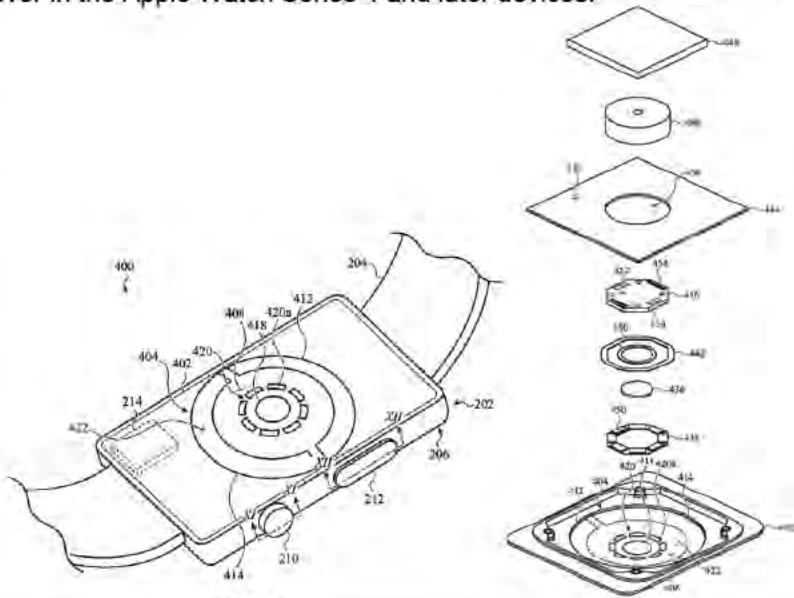
U.S. Patent No. 10,292,628 Claim 1	Description of Accused Products
a plurality of emitters configured to emit light into tissue of a user;	<p>The Apple Watch Series 4 and later devices include a plurality of emitters configured to emit light into tissue of a user. The Apple Watch Series 4 and later devices include green and infrared LEDs as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The Apple Watches Series 4 and later devices are worn on the wrist such that the detectors are configured to detect light that has passed through tissue and is indicative of a physiological parameter of the wearer:</p> <p>The optical heart sensor in Apple Watch uses what is known as photoplethysmography. This technology, while difficult to pronounce, is based on a very simple fact: Blood is red because it reflects red light and absorbs green light. Apple Watch uses green LED lights paired with light-sensitive photodiodes to detect the amount of blood flowing through your wrist at any given moment. When your heart beats, the blood flow in your wrist — and the green light absorption — is greater. Between beats, it's less. By flashing its LED lights hundreds of times per second, Apple Watch can calculate the number of times the heart beats each minute — your heart rate. The optical heart sensor supports a range of 30–210 beats per minute. In addition, the optical heart sensor is designed to compensate for low signal levels by increasing both LED brightness and sampling rate.</p> <p><a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>




U.S. Patent No. 10,292,628 Claim 1	Description of Accused Products
<p>a plurality of detectors configured to detect light that has been attenuated by tissue of the user, wherein the plurality of detectors comprise at least four detectors;</p>	<p>The Apple Watch Series 4 and later devices include a plurality of detectors configured to detect light that has been attenuated by tissue of the user, wherein the plurality of detectors comprise at least four detectors. The Apple Watch Series 4 and later devices include photodiode sensors as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The Apple Watches Series 4 and later devices are worn on the wrist such that the detectors are configured to detect light that has passed through tissue and is indicative of a physiological parameter of the wearer:</p> <p>The optical heart sensor in Apple Watch uses what is known as photoplethysmography. This technology, while difficult to pronounce, is based on a very simple fact: Blood is red because it reflects red light and absorbs green light. Apple Watch uses green LED lights paired with light-sensitive photodiodes to detect the amount of blood flowing through your wrist at any given moment. When your heart beats, the blood flow in your wrist — and the green light absorption — is greater. Between beats, it's less. By flashing its LED lights hundreds of times per second, Apple Watch can calculate the number of times the heart beats each minute — your heart rate. The optical heart sensor supports a range of 30–210 beats per minute. In addition, the optical heart sensor is designed to compensate for low signal levels by increasing both LED brightness and sampling rate.</p> <p><a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>





U.S. Patent No. 10,292,628 Claim 1	Description of Accused Products
<p>a housing configured to house at least the plurality of detectors; and</p>	<p>The Apple Watch Series 4 and later devices include a housing configured to house at least the plurality of detectors. Fig. 4C of Apple's U.S. Patent Application Publication 2019/0072912 (the '912 publication), shows, for example, such housing:</p>  <p style="text-align: center;"><b>FIG. 4C</b></p>

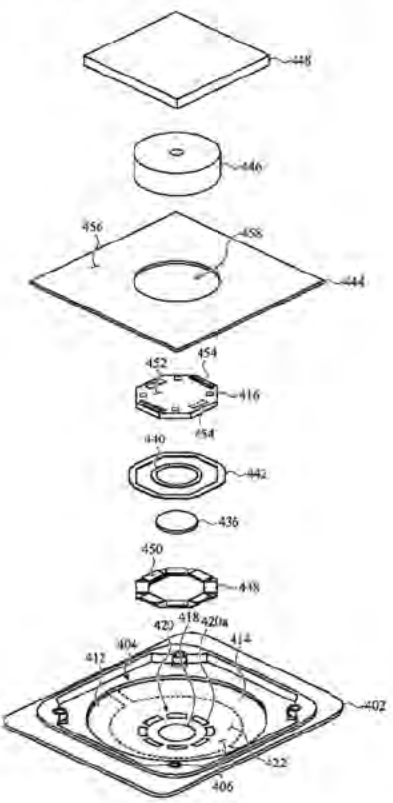
U.S. Patent No. 10,292,628 Claim 1	Description of Accused Products
<p>a light permeable cover configured to be located between tissue of the user and the plurality of detectors when the noninvasive optical physiological sensor is worn by the user, wherein the cover comprises an outwardly protruding convex surface configured to cause tissue of the user to conform to at least a portion of the outwardly protruding convex surface when the noninvasive optical physiological sensor is worn by the user and during operation of the noninvasive optical physiological sensor, and wherein the plurality of detectors are configured to receive light passed through the outwardly protruding convex surface after attenuation by tissue of the user.</p>	<p>The Apple Watch Series 4 and later devices include a light permeable cover configured to be located between tissue of the user and the plurality of detectors when the noninvasive optical physiological sensor is worn by the user, wherein the cover comprises an outwardly protruding convex surface configured to cause tissue of the user to conform to at least a portion of the outwardly protruding convex surface when the noninvasive optical physiological sensor is worn by the user and during operation of the noninvasive optical physiological sensor, and wherein the plurality of detectors are configured to receive light passed through the outwardly protruding convex surface after attenuation by tissue of the user.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such a cover in the Apple Watch Series 4 and later devices:</p>  <p>FIG. 4A is a perspective view of an Apple Watch Series 4 and later device (400) showing the light permeable cover (204) and the plurality of detectors (402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426, 428, 430, 432, 434, 436, 438, 440, 442, 444, 446, 448, 450, 452, 454, 456, 458, 460, 462, 464, 466, 468, 470, 472, 474, 476, 478, 480, 482, 484, 486, 488, 490, 492, 494, 496, 498, 500, 502, 504, 506, 508, 510, 512, 514, 516, 518, 520, 522, 524, 526, 528, 530, 532, 534, 536, 538, 540, 542, 544, 546, 548, 550, 552, 554, 556, 558, 560, 562, 564, 566, 568, 570, 572, 574, 576, 578, 580, 582, 584, 586, 588, 590, 592, 594, 596, 598, 600, 602, 604, 606, 608, 610, 612, 614, 616, 618, 620, 622, 624, 626, 628, 630, 632, 634, 636, 638, 640, 642, 644, 646, 648, 650, 652, 654, 656, 658, 660, 662, 664, 666, 668, 670, 672, 674, 676, 678, 680, 682, 684, 686, 688, 690, 692, 694, 696, 698, 700, 702, 704, 706, 708, 710, 712, 714, 716, 718, 720, 722, 724, 726, 728, 730, 732, 734, 736, 738, 740, 742, 744, 746, 748, 750, 752, 754, 756, 758, 760, 762, 764, 766, 768, 770, 772, 774, 776, 778, 780, 782, 784, 786, 788, 790, 792, 794, 796, 798, 800, 802, 804, 806, 808, 810, 812, 814, 816, 818, 820, 822, 824, 826, 828, 830, 832, 834, 836, 838, 840, 842, 844, 846, 848, 850, 852, 854, 856, 858, 860, 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, 892, 894, 896, 898, 900, 902, 904, 906, 908, 910, 912, 914, 916, 918, 920, 922, 924, 926, 928, 930, 932, 934, 936, 938, 940, 942, 944, 946, 948, 950, 952, 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980, 982, 984, 986, 988, 990, 992, 994, 996, 998, 1000, 1002, 1004, 1006, 1008, 1010, 1012, 1014, 1016, 1018, 1020, 1022, 1024, 1026, 1028, 1030, 1032, 1034, 1036, 1038, 1040, 1042, 1044, 1046, 1048, 1050, 1052, 1054, 1056, 1058, 1060, 1062, 1064, 1066, 1068, 1070, 1072, 1074, 1076, 1078, 1080, 1082, 1084, 1086, 1088, 1090, 1092, 1094, 1096, 1098, 1100, 1102, 1104, 1106, 1108, 1110, 1112, 1114, 1116, 1118, 1120, 1122, 1124, 1126, 1128, 1130, 1132, 1134, 1136, 1138, 1140, 1142, 1144, 1146, 1148, 1150, 1152, 1154, 1156, 1158, 1160, 1162, 1164, 1166, 1168, 1170, 1172, 1174, 1176, 1178, 1180, 1182, 1184, 1186, 1188, 1190, 1192, 1194, 1196, 1198, 1200, 1202, 1204, 1206, 1208, 1210, 1212, 1214, 1216, 1218, 1220, 1222, 1224, 1226, 1228, 1230, 1232, 1234, 1236, 1238, 1240, 1242, 1244, 1246, 1248, 1250, 1252, 1254, 1256, 1258, 1260, 1262, 1264, 1266, 1268, 1270, 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2268, 2270, 2272, 2274, 2276, 2278, 2280, 2282, 2284, 2286, 2288, 2290, 2292, 2294, 2296, 2298, 2300, 2302, 2304, 2306, 2308, 2310, 2312, 2314, 2316, 2318, 2320, 2322, 2324, 2326, 2328, 2330, 2332, 2334, 2336, 2338, 2340, 2342, 2344, 2346, 2348, 2350, 2352, 2354, 2356, 2358, 2360, 2362, 2364, 2366, 2368, 2370, 2372, 2374, 2376, 2378, 2380, 2382, 2384, 2386, 2388, 2390, 2392, 2394, 2396, 2398, 2400, 2402, 2404, 2406, 2408, 2410, 2412, 2414, 2416, 2418, 2420, 2422, 2424, 2426, 2428, 2430, 2432, 2434, 2436, 2438, 2440, 2442, 2444, 2446, 2448, 2450, 2452, 2454, 2456, 2458, 2460, 2462, 2464, 2466, 2468, 2470, 2472, 2474, 2476, 2478, 2480, 2482, 2484, 2486, 2488, 2490, 2492, 2494, 2496, 2498, 2500, 2502, 2504, 2506, 2508, 2510, 2512, 2514, 2516, 2518, 2520, 2522, 2524, 2526, 2528, 2530, 2532, 2534, 2536, 2538, 2540, 2542, 2544, 2546, 2548, 2550, 2552, 2554, 2556, 2558, 2560, 2562, 2564, 2566, 2568, 2570, 2572, 2574, 2576, 2578, 2580, 2582, 2584, 2586, 2588, 2590, 2592, 2594, 2596, 2598, 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3264, 3266, 3268, 3270, 3272, 3274, 3276, 3278, 3280, 3282, 3284, 3286, 3288, 3290, 3292, 3294, 3296, 3298, 3300, 3302, 3304, 3306, 3308, 3310, 3312, 3314, 3316, 3318, 3320, 3322, 3324, 3326, 3328, 3330, 3332, 3334, 3336, 3338, 3340, 3342, 3344, 3346, 3348, 3350, 3352, 3354, 3356, 3358, 3360, 3362, 3364, 3366, 3368, 3370, 3372, 3374, 3376, 3378, 3380, 3382, 3384, 3386, 3388, 3390, 3392, 3394, 3396, 3398, 3400, 3402, 3404, 3406, 3408, 3410, 3412, 3414, 3416, 3418, 3420, 3422, 3424, 3426, 3428, 3430, 3432, 3434, 3436, 3438, 3440, 3442, 3444, 3446, 3448, 3450, 3452, 3454, 3456, 3458, 3460, 3462, 3464, 3466, 3468, 3470, 3472, 3474, 3476, 3478, 3480, 3482, 3484, 3486, 3488, 3490, 3492, 3494, 3496, 3498, 3500, 3502, 3504, 3506, 3508, 3510, 3512, 3514, 3516, 3518, 3520, 3522, 3524, 3526, 3528, 3530, 3532, 3534, 3536, 3538, 3540, 3542, 3544, 3546, 3548, 3550, 3552, 3554, 3556, 3558, 3560, 3562, 3564, 3566, 3568, 3570, 3572, 3574, 3576, 3578, 3580, 3582, 3584, 3586, 3588, 3590, 3592, 3594, 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4260, 4262, 4264, 4266, 4268, 4270, 4272, 4274, 4276, 4278, 4280, 4282, 4284, 4286, 4288, 4290, 4292, 4294, 4296, 4298, 4300, 4302, 4304, 4306, 4308, 4310, 4312, 4314, 4316, 4318, 4320, 4322, 4324, 4326, 4328, 4330, 4332, 4334, 4336, 4338, 4340, 4342, 4344, 4346, 4348, 4350, 4352, 4354, 4356, 4358, 4360, 4362, 4364, 4366, 4368, 4370, 4372, 4374, 4376, 4378, 4380, 4382, 4384, 4386, 4388, 4390, 4392, 4394, 4396, 4398, 4400, 4402, 4404, 4406, 4408, 4410, 4412, 44</p>

**U.S. Patent No. 10,588,553**

U.S. Patent No. 10,588,553 Claim 1	Description of Accused Products
<p>A noninvasive optical physiological sensor comprising:</p>	<p>The Apple Watch Series 4 and 5 devices are noninvasive optical physiological sensors as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The image is a composite. On the left is a technical diagram of an optical sensor assembly. It features a central circular area with a green dot in the middle, surrounded by a ring of smaller green dots. This central area is labeled 'OPTICAL SENSOR'. To the left of this central area are two labels: 'LIGHT SOURCE' and 'PHOTODIODE'. To the right of the central area are two labels: 'LIGHT SOURCE' and 'PHOTODIODE'. On the right side of the image is a smartphone displaying a heart rate monitoring app. The app shows a heart rate range of '43-163 bpm' for a 'MAXIMUM' heart rate. Below this is a bar chart showing heart rate over time. The app also displays a 'Resting Rate' of '55 bpm' and a 'Highlights' section with 'First Peak Workout' and 'Today'. A red Apple Watch is positioned in front of the smartphone, showing the same heart rate data on its screen.</p>


U.S. Patent No. 10,588,553 Claim 1	Description of Accused Products
<p>a plurality of emitters configured to emit light into tissue of a user;</p>	<p>The Apple Watch Series 4 and 5 devices include a plurality of emitters configured to emit light into tissue of a user. The Apple Watch Series 4 and 5 devices include green and infrared LEDs as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 
<p>at least four detectors, wherein at least one of the at least four detectors is configured to detect light that has been attenuated by tissue of the user, and wherein the at least four detectors are arranged on a substrate;</p>	<p>The Apple Watch Series 4 and 5 devices include at least four detectors, wherein at least one of the at least four detectors is configured to detect light that has been attenuated by tissue of the user, and wherein the at least four detectors are arranged on a substrate. The Apple Watch Series 4 and 5 devices include eight photodiode sensors on a substrate, as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The Apple Watches Series 4 and 5 devices are worn on the wrist such that the detectors are configured to detect light that has passed through tissue:</p>





U.S. Patent No. 10,588,553 Claim 1	Description of Accused Products
	<p>The optical heart sensor in Apple Watch uses what is known as photoplethysmography. This technology, while difficult to pronounce, is based on a very simple fact: Blood is red because it reflects red light and absorbs green light. Apple Watch uses green LED lights paired with light-sensitive photodiodes to detect the amount of blood flowing through your wrist at any given moment. When your heart beats, the blood flow in your wrist — and the green light absorption — is greater. Between beats, it's less. By flashing its LED lights hundreds of times per second, Apple Watch can calculate the number of times the heart beats each minute — your heart rate. The optical heart sensor supports a range of 30–210 beats per minute. In addition, the optical heart sensor is designed to compensate for low signal levels by increasing both LED brightness and sampling rate.</p> <p><a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>
<p>a wall configured to circumscribe at least the at least four detectors; and</p>	<p>The Apple Watch Series 4 and 5 devices include a wall configured to circumscribe at least the at least four detectors. Fig. 4C of Apple's U.S. Patent Application Publication 2019/0072912 (the '912 publication) is illustrative of the Apple Watch Series 4 and later devices. The Apple Watch Series 4 and later devices have, for example, wall circumscribing photodiode sensors arranged on a substrate:</p>  <p style="text-align: center;">FIG. 4C</p>

U.S. Patent No. 10,588,553 Claim 1	Description of Accused Products
<p>a cover configured to be located between tissue of the user and the at least four detectors when the noninvasive optical physiological sensor is worn by the user, wherein the cover comprises a single protruding convex surface operable to conform tissue of the user to at least a portion of the single protruding convex surface when the noninvasive optical physiological sensor is worn by the user, and wherein the wall operably connects to the substrate and the cover.</p>	<p>The Apple Watch Series 4 and later devices include a cover configured to be located between tissue of the user and the at least four detectors when the noninvasive optical physiological sensor is worn by the user, wherein the cover comprises a single protruding convex surface operable to conform tissue of the user to at least a portion of the single protruding convex surface when the noninvasive optical physiological sensor is worn by the user, and wherein the wall operably connects to the substrate and the cover.</p> <p>The dome-shaped carrier in Figs. 4A and 4C of Apple's '912 publication is illustrative of the Apple Watch Series 4 and later devices. The dome-shaped carrier has a surface that protrudes from the back of the watch, is located between tissue of the user and the at least four detectors when the noninvasive optical physiological sensor is worn by the user, and comprises a single protruding convex surface operable to conform tissue of the user to at least a portion of the single protruding convex surface when the noninvasive optical physiological sensor is worn by the user, wherein the wall operably connects to the substrate and the cover:</p> <div data-bbox="597 827 1386 1442"> </div>

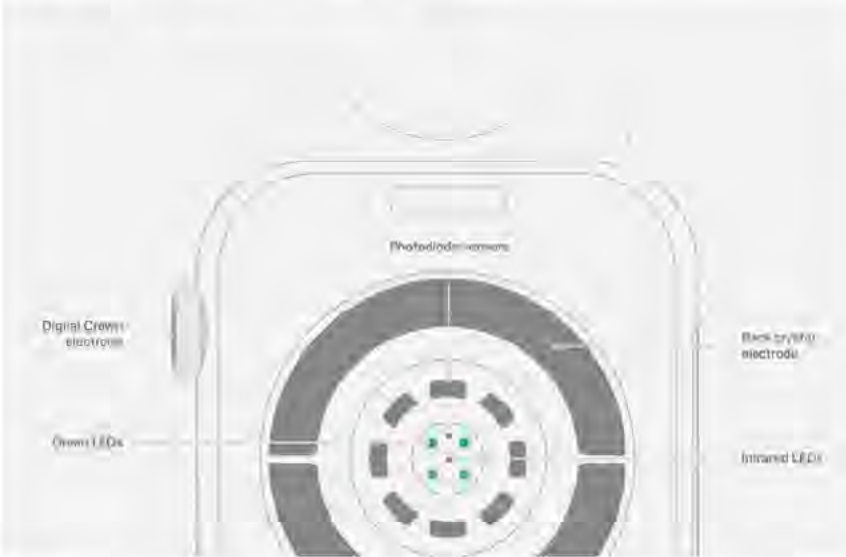
**U.S. Patent No. 10,588,554**

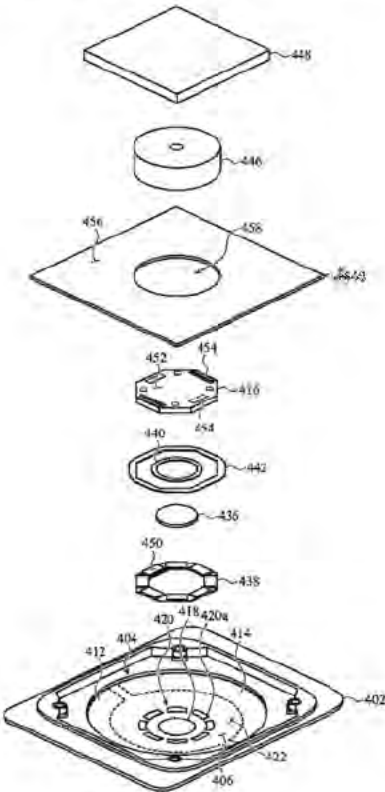
U.S. Patent No. 10,588,554 Claim 20	Description of Accused Products
A physiological measurement system comprising:	<p>The Apple Watch Series 4 and later devices in combination with iPhone devices are physiological measurement systems.</p> <p>The Apple Watch Series 4 and later devices as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 

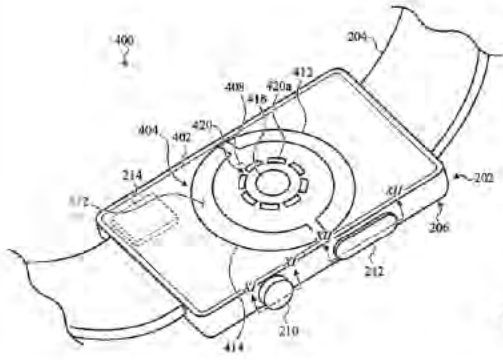
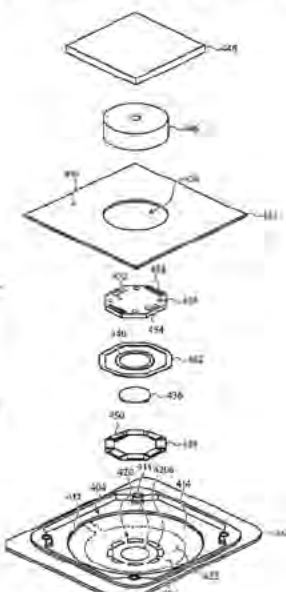


U.S. Patent No. 10,588,554 Claim 20	Description of Accused Products
<p>a physiological sensor device comprising:</p>	<p>The Apple Watch Series 4 and later devices are physiological sensor devices.</p> <p>The Apple Watch Series 4 and later devices include a plurality of emitters of different wavelengths (for example, green and infrared LEDs) and at least four detectors (for example, photodiode sensors) spaced apart from each other as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The emitters and detectors are used to monitor physiological parameters, such as pulse rate. See <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>
<p>a plurality of emitters configured to emit light into tissue of a user;</p>	<p>The Apple Watch Series 4 and later devices include a plurality of emitters configured to emit light into tissue of a user. The Apple Watch Series 4 and later devices include green and infrared LEDs as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 

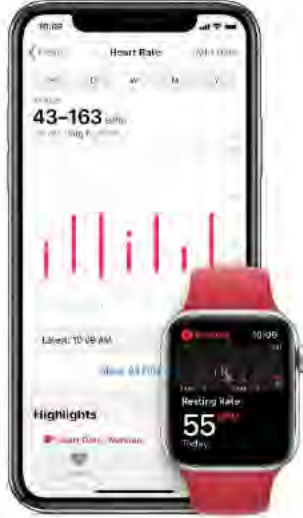


U.S. Patent No. 10,588,554 Claim 20	Description of Accused Products
<p>at least four detectors, wherein each of the at least four detectors has a corresponding window that allows light to pass through to the detector;</p>	<p>The Apple Watch Series 4 and later devices include at least four detectors, wherein each of the at least four detectors has a corresponding window that allows light to pass through to the detector. The Apple Watch Series 4 and later devices include eight photodiode sensors with corresponding windows that allow light to pass through to the detector, as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The Apple Watches Series 4 and later devices are worn on the wrist such that the detectors are configured to detect light that has passed through tissue:</p> <p>The optical heart sensor in Apple Watch uses what is known as photoplethysmography. This technology, while difficult to pronounce, is based on a very simple fact: Blood is red because it reflects red light and absorbs green light. Apple Watch uses green LED lights paired with light-sensitive photodiodes to detect the amount of blood flowing through your wrist at any given moment. When your heart beats, the blood flow in your wrist — and the green light absorption — is greater. Between beats, it's less. By flashing its LED lights hundreds of times per second, Apple Watch can calculate the number of times the heart beats each minute — your heart rate. The optical heart sensor supports a range of 30–210 beats per minute. In addition, the optical heart sensor is designed to compensate for low signal levels by increasing both LED brightness and sampling rate.</p> <p><a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>



U.S. Patent No. 10,588,554 Claim 20	Description of Accused Products
<p>a wall that surrounds at least the at least four detectors; and</p>	<p>The Apple Watch Series 4 and later devices include a wall that surrounds at least the at least four detectors. Fig. 4C of Apple's U.S. Patent Application Publication 2019/0072912 (the '912 publication) is illustrative of the Apple Watch Series 4 and later devices. The Apple Watch Series 4 and later devices have, for example, a wall surrounding photodiode sensors arranged on substrate:</p>  <p style="text-align: center;"><b>FIG. 4C</b></p>


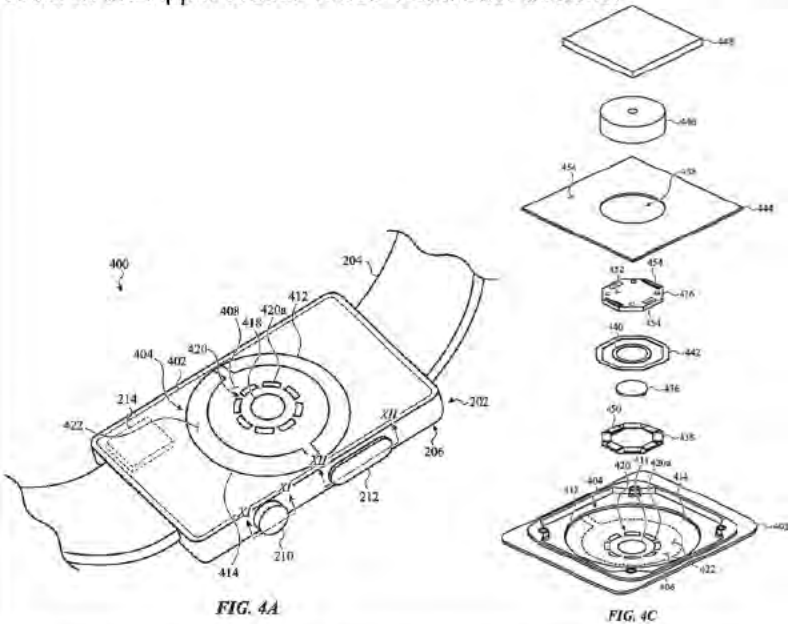
U.S. Patent No. 10,588,554 Claim 20	Description of Accused Products
<p>a cover comprising a single protruding convex surface, wherein the single protruding convex surface is configured to be located between tissue of the user and the at least four detectors when the physiological sensor device is worn by the user, wherein at least a portion of the single protruding convex surface is sufficiently rigid to cause tissue of the user to conform to at least a portion of a shape of the single protruding convex surface when the physiological sensor device is worn by the user, and wherein the cover operably connects to the wall; and</p>	<p>The Apple Watch Series 4 and later devices include a cover comprising a single protruding convex surface, wherein the single protruding convex surface is configured to be located between tissue of the user and the at least four detectors when the physiological sensor device is worn by the user, wherein at least a portion of the single protruding convex surface is sufficiently rigid to cause tissue of the user to conform to at least a portion of a shape of the single protruding convex surface when the physiological sensor device is worn by the user, and wherein the cover operably connects to the wall; and</p> <p>The Apple Watch Series 4 and later devices include a dome-shaped carrier having a surface that protrudes from the back of the watch. The dome-shaped carrier is located between tissue of the user and the at least four detectors when the noninvasive optical physiological sensor is worn by the user, and comprises a single protruding convex surface operable to conform tissue of the user to at least a portion of the single protruding convex surface when the noninvasive optical physiological sensor is worn by the user, and wherein the wall operably connects to the substrate and the cover. Figs. 4A and 4C of Apple's '912 publication are illustrative of the dome-shaped cover in the Apple Watch Series 4 and later devices:</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;">   </div> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <p>FIG. 4A</p> <p>FIG. 4C</p> </div>





U.S. Patent No. 10,588,554 Claim 20	Description of Accused Products
<p>a handheld computing device in wireless communication with the physiological sensor device.</p>	<p>The Apple Watch Series 4 and later devices are physiological sensor devices that communicate wirelessly with handheld computing devices.</p> <p>The Apple Watch Series 4 and later devices communicate wirelessly with Apple iOS devices as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The Apple Watch Series 4 and later devices communicate wirelessly with Apple iOS devices as described on the Apple website at <a href="https://support.apple.com/en-us/HT204505">https://support.apple.com/en-us/HT204505</a>:</p> <p>To set up and use your Apple Watch, you need an iPhone with the latest version of iOS.</p> <p>watchOS 6 is compatible with Apple Watch Series 1 and later. Upgrading to watchOS 6 requires an iPhone 6s or later running iOS 13 or later.</p> <p>You also need to make sure that your iPhone has Bluetooth turned on, and that it's connected to Wi-Fi or a cellular network.</p> <p>If you already set up your Apple Watch but want to use it with a different iPhone, you can transfer your Apple Watch and its content to your new iPhone.</p>



U.S. Patent No. 10,624,564

U.S. Patent No. 10,624,564 Claim 1	Description of Accused Products
1. A user-worn physiological measurement device comprising:	<p>The Apple Watch Series 4 and later devices are user-worn physiological measurement devices as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 
one or more emitters configured to emit light into tissue of a user;	<p>The Apple Watch Series 4 and later devices include one or more emitters configured to emit light into tissue of a user as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 
at least four detectors arranged on a substrate;	<p>The Apple Watch Series 4 and later devices include at least four detectors arranged on a substrate as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>



U.S. Patent No. 10,624,564 Claim 1	Description of Accused Products
	
<p>a cover comprising a protruding convex surface, wherein the protruding convex surface extends over all of the at least four detectors arranged on the substrate, wherein at least a portion of the protruding convex surface is rigid;</p>	<p>The Apple Watch Series 4 and later devices include a rigid protruding convex surface that extends over all of the at least four detectors arranged on the substrate.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such a cover in the Apple Watch Series 4 and later devices:</p>  <p style="text-align: center;">FIG. 4A</p> <p style="text-align: center;">FIG. 4C</p>
<p>one or more processors configured to:</p>	<p>The Apple Watch Series 4 and later devices include one or more processors as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>

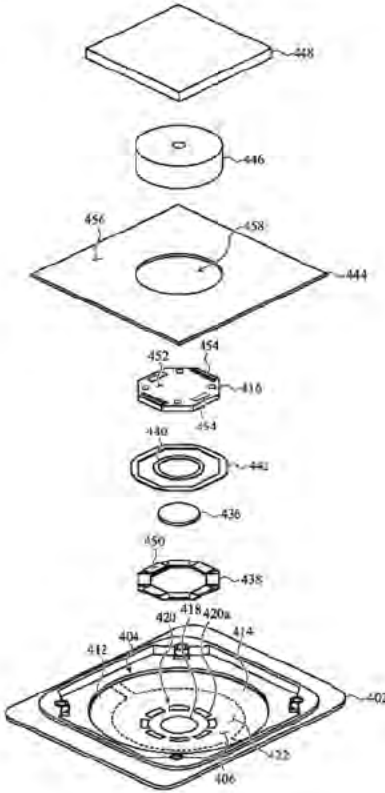




U.S. Patent No. 10,624,564 Claim 1	Description of Accused Products
	
<p>receive one or more signals from at least one of the at least four detectors, the one or more signals responsive to at least a physiological parameter of the user; and</p>	<p>The Apple Watch Series 4 and later devices receive one or more signals from at least one of the at least four detectors, the one or more signals responsive to at least a physiological parameter of the user as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 
<p>process the one or more signals to determine measurements of the physiological parameter;</p>	<p>The Apple Watch Series 4 and later devices process the one or more signals to determine measurements of the physiological parameter as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>

U.S. Patent No. 10,624,564 Claim 1	Description of Accused Products
	
a network interface configured to communicate with a mobile phone;	<p>The Apple Watch Series 4 and later devices include a network interface configured to communicate with a mobile phone as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 
a touch-screen display configured to provide a user interface, wherein:	<p>The Apple Watch Series 4 and later devices include a touch-screen display configured to provide a user interface as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>




U.S. Patent No. 10,624,564 Claim 1	Description of Accused Products
	
<p>the user interface is configured to display indicia responsive to the measurements of the physiological parameter, and</p>	<p>The Apple Watch Series 4 and later devices include a user interface configured to display indicia responsive to the measurements of the physiological parameter as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 
<p>an orientation of the user interface is configurable responsive to a user input;</p>	<p>The Apple Watch Series 4 and later devices have an orientation of the user interface that is configurable responsive to a user input as shown on the Apple website at <a href="https://support.apple.com/guide/watch/change-language-orientation-apple-watch-apd0bf18f46b/watchos">https://support.apple.com/guide/watch/change-language-orientation-apple-watch-apd0bf18f46b/watchos</a>.</p>



U.S. Patent No. 10,624,564 Claim 1	Description of Accused Products
<p>a wall that surrounds at least the at least four detectors, wherein the wall operably connects to the substrate and the cover;</p>	<p>The Apple Watch Series 4 and later devices include a wall that surrounds at least the at least four detectors and operably connects to the substrate and the cover.</p> <p>Fig. 4C of Apple's U.S. Patent Application Publication 2019/0072912 (the '912 publication) is illustrative of the Apple Watch Series 4 and later devices. The Apple Watch Series 4 and later devices have, for example, such a wall:</p>  <p style="text-align: center;">FIG. 4C</p>
<p>a storage device configured to at least temporarily store at least the measurements of the physiological parameter; and</p>	<p>The Apple Watch Series 4 and later devices include a storage device configured to at least temporarily store at least the measurements of the physiological parameter as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>


U.S. Patent No. 10,624,564 Claim 1	Description of Accused Products
	
<p>a strap configured to position the physiological measurement device on the user.</p>	<p>The Apple Watch Series 4 and later devices include a strap configured to position the physiological measurement device on the user as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 

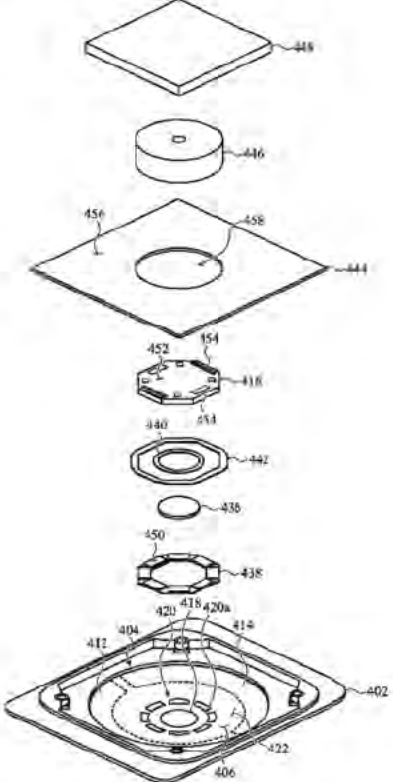
U.S. Patent No. 10,631,765

U.S. Patent No. 10,631,765 Claim 1	Description of Accused Products
<p>1. A physiological measurement system comprising:</p>	<p>The Apple Watch Series 4 and later devices in combination with iPhone devices are physiological measurement systems.</p> <p>The Apple Watch Series 4 and later devices include a plurality of emitters of different wavelengths (for example, green and infrared LEDs) and at least four detectors (for example, photodiode sensors) spaced apart from each other as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The diagram shows the back of an Apple Watch Series 4 with labels for 'Optical heart rate sensor', 'Green LED', 'Infrared LED', and 'Photodiode sensor'. The screenshot shows the 'Heart Rate' app on an iPhone, displaying a heart rate range of 43-163 bpm, a graph of heart rate over time, and a 'Resting Rate' of 55 bpm.</p> <p>The emitters and detectors are used to monitor physiological parameters, such as pulse rate. See <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>
<p>a physiological sensor device comprising:</p>	<p>The Apple Watch Series 4 and later devices are physiological sensor devices as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>



U.S. Patent No. 10,631,765 Claim 1	Description of Accused Products
	 <p>The emitters and detectors are used to monitor physiological parameters, such as pulse rate. See <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>
one or more emitters configured to emit light into tissue of a user;	 <p>The Apple Watch Series 4 and later devices include one or more emitters configured to emit light into tissue of a user as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> <p>The emitters and detectors are used to monitor physiological parameters, such as pulse rate. See <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>
at least four detectors, wherein each of the at least four detectors has a corresponding window that	<p>The Apple Watch Series 4 and later devices include at least four detectors with a corresponding window that allows light to pass through to the detector.</p> <p>The Apple Watch Series 4 and later devices include a plurality of emitters of different wavelengths (for example, green and infrared</p>



U.S. Patent No. 10,631,765 Claim 1	Description of Accused Products
allows light to pass through to the detector;	<p>LEDs) and at least four detectors (for example, photodiode sensors) spaced apart from each other as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The emitters and detectors are used to monitor physiological parameters, such as pulse rate. See <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p> <p>See also apertures 230 described in US20190090806A1, including Fig. 2.</p>
a wall that surrounds at least the at least four detectors; and	<p>The Apple Watch Series 4 and later devices include a wall that surrounds at least the at least four detectors.</p>



U.S. Patent No. 10,631,765 Claim 1	Description of Accused Products
	<p>Fig. 4C of Apple's U.S. Patent Application Publication 2019/0072912 (the '912 publication) is illustrative of the Apple Watch Series 4 and later devices. The Apple Watch Series 4 and later devices have, for example, such a wall:</p>  <p style="text-align: center;"><b>FIG. 4C</b></p>
<p>a cover comprising a protruding convex surface, wherein the protruding convex surface is above all of the at least four detectors, wherein at least a portion of the protruding convex surface is rigid, and wherein the cover operably connects to the wall; and</p>	<p>The Apple Watch Series 4 and later devices include a rigid protruding convex surface that is above all of the at least four detectors and operably connects to the wall.</p>





U.S. Patent No. 10,631,765 Claim 1	Description of Accused Products
	<p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such a cover in the Apple Watch Series 4 and later devices:</p> <p>FIG. 4A</p> <p>FIG. 4C</p>
<p>a handheld computing device in wireless communication with the physiological sensor device, wherein the handheld computing device comprises:</p>	<p>The Apple iPhone devices are in wireless communication with the physiological sensor device as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>
<p>one or more processors configured to wirelessly receive one or more signals from the physiological sensor device, the one or more signals responsive to</p>	<p>The Apple iPhone devices include one or more processors configured to wirelessly receive one or more signals from the physiological sensor device, the one or more signals responsive to at least a physiological parameter of the user as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>





U.S. Patent No. 10,631,765 Claim 1	Description of Accused Products
at least a physiological parameter of the user;	
a touch-screen display configured to provide a user interface, wherein:	<p>The iPhone devices include a touch-screen display configured to provide a user interface as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 
the user interface is configured to display indicia responsive to measurements of the physiological parameter, and	<p>The Apple iPhone devices include a user interface configured to display indicia responsive to measurements of the physiological parameter as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>



U.S. Patent No. 10,631,765 Claim 1	Description of Accused Products
	
<p>an orientation of the user interface is configurable responsive to a user input; and</p>	<p>The Apple iPhone devices have an orientation of the user interface that is configurable responsive to a user input as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204547">https://support.apple.com/en-us/HT204547</a>, <a href="https://support.apple.com/guide/watch/change-language-orientation-apple-watch-apd0bf18f46b/watchos">https://support.apple.com/guide/watch/change-language-orientation-apple-watch-apd0bf18f46b/watchos</a>.</p>
<p>a storage device configured to at least temporarily store at least the measurements of the physiological parameter.</p>	<p>The Apple iPhone devices include a storage device configured to at least temporarily store at least the measurements of the physiological parameter as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 



**U.S. Patent No. 10,702,194**

U.S. Patent No. 10,702,194 Claim 1	Description of Accused Products
<p>1. A physiological measurement system comprising:</p>	<p>The Apple Watch Series 4 and later devices are physiological measurement systems as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The diagram shows the back of an Apple Watch Series 4 with the heart rate sensor highlighted. The screenshot shows the Apple Watch app on an iPhone, displaying heart rate data for a specific day, including a range of 43-163 BPM and a resting rate of 55 BPM.</p>
<p>a physiological sensor device comprising:</p>	<p>The Apple Watch Series 4 and later devices are physiological sensor devices as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The diagram shows the back of an Apple Watch Series 4 with the heart rate sensor highlighted. The screenshot shows the Apple Watch app on an iPhone, displaying heart rate data for a specific day, including a range of 43-163 BPM and a resting rate of 55 BPM.</p>





U.S. Patent No. 10,702,194 Claim 1	Description of Accused Products
one or more emitters configured to emit light into tissue of a user;	<p>The Apple Watch Series 4 and later devices include one or more emitters configured to emit light into tissue of a user as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The diagram shows the back of an Apple Watch Series 4 with labels for the heart rate sensor components: 'Optical Heart Rate Sensor', 'LEDs', 'Photodiodes', 'LEDs', 'Optical Heart Rate Sensor', 'LEDs', 'Photodiodes', 'LEDs', 'Optical Heart Rate Sensor', 'LEDs', 'Photodiodes', 'LEDs'. The screenshot shows the 'Heart Rate' app on an iPhone with a heart rate range of 43-163 BPM and a resting heart rate of 55 BPM. The watch face also displays the resting heart rate of 55 BPM.</p>
a first set of photodiodes, wherein:	<p>The Apple Watch Series 4 and later devices include a first set of photodiodes as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The diagram shows the back of an Apple Watch Series 4 with labels for the heart rate sensor components: 'Optical Heart Rate Sensor', 'LEDs', 'Photodiodes', 'LEDs', 'Optical Heart Rate Sensor', 'LEDs', 'Photodiodes', 'LEDs', 'Optical Heart Rate Sensor', 'LEDs', 'Photodiodes', 'LEDs'. The screenshot shows the 'Heart Rate' app on an iPhone with a heart rate range of 43-163 BPM and a resting heart rate of 55 BPM. The watch face also displays the resting heart rate of 55 BPM.</p>
the first set of photodiodes comprises at least four photodiodes,	<p>The Apple Watch Series 4 and later devices include the first set of photodiodes comprises at least four photodiodes as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>

U.S. Patent No. 10,702,194 Claim 1	Description of Accused Products
	
<p>the photodiodes of the first set of photodiodes are connected to one another in parallel to provide a first signal stream, and</p>	<p>Upon information and belief, the Apple Watch Series 4 and later devices include a first set of photodiodes connected to one another in parallel to provide a first signal stream as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 
<p>each of the photodiodes of the first set of photodiodes has a corresponding window that allows light to pass through to the photodiode;</p>	<p>The Apple Watch Series 4 and later devices are configured so that each of the photodiodes of the first set of photodiodes has a corresponding window that allows light to pass through to the photodiode as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>

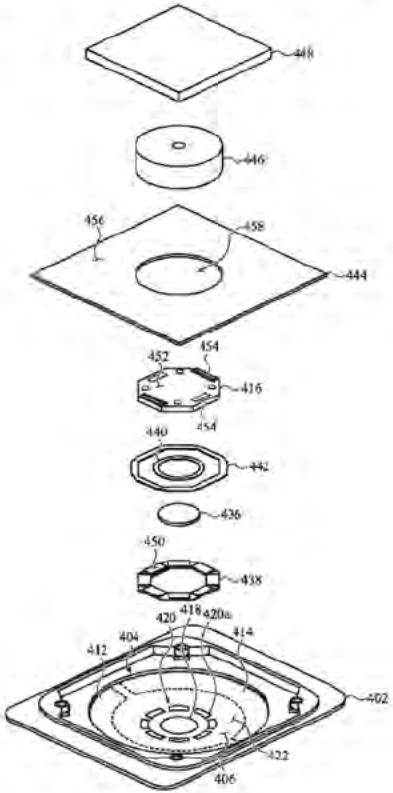
U.S. Patent No. 10,702,194 Claim 1	Description of Accused Products
	 <p>See also apertures 230 described in US20190090806A1, including Fig. 2.</p>
a second set of photodiodes, wherein:	<p>The Apple Watch Series 4 and later devices include a second set of photodiodes as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 
the second set of photodiodes comprises at least four photodiodes,	<p>The Apple Watch Series 4 and later devices include a second set of photodiodes that comprises four photodiodes as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>

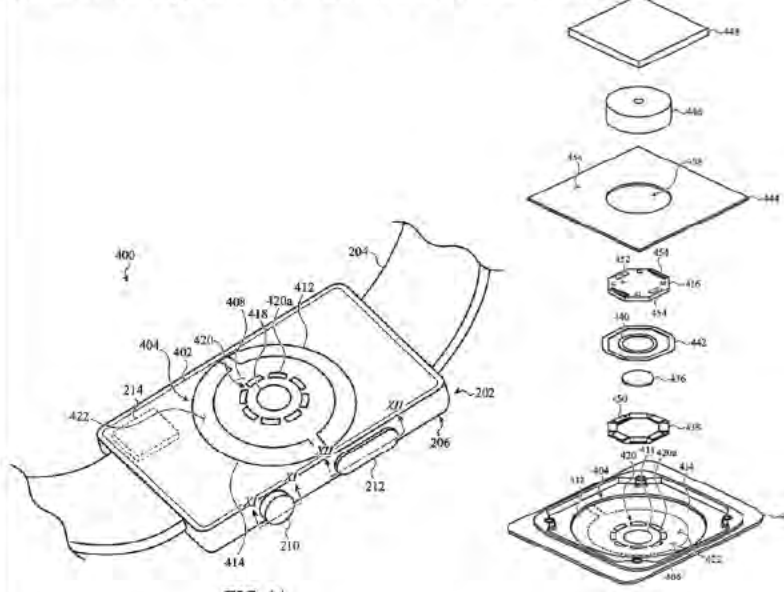





U.S. Patent No. 10,702,194 Claim 1	Description of Accused Products
	
<p>the photodiodes of the second set of photodiodes are connected to one another in parallel to provide a second signal stream, and</p>	<p>Upon information and belief, the Apple Watch Series 4 and later devices include photodiodes connected to one another in parallel to provide a second signal stream as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 
<p>each of the photodiodes of the second set of photodiodes has a corresponding window that allows light to pass through to the photodiode;</p>	<p>The Apple Watch Series 4 and later devices are configured so that each of the photodiodes of the second set of photodiodes has a corresponding window that allows light to pass through to the photodiode as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>

U.S. Patent No. 10,702,194 Claim 1	Description of Accused Products
	 <p>The image is a composite. On the left is a medical device with a circular sensor array. On the right is a smartphone displaying a heart rate app. The app shows a heart rate range of 43-163 BPM for the period Jul 20 - Aug 6, 2019. Below this is a bar chart showing heart rate over time. At the bottom, it says 'Highlights' and 'Heart Rate (Workout)' with a value of 55 BPM. A red Apple Watch is also shown next to the smartphone.</p> <p>See also apertures 230 described in US20190090806A1, including Fig. 2.</p>





U.S. Patent No. 10,702,194 Claim 1	Description of Accused Products
<p>a wall that surrounds at least the first and second sets of photodiodes; and</p>	<p>The Apple Watch Series 4 and later devices include a wall that surrounds at least the first and second sets of photodiodes.</p> <p>Fig. 4C of Apple's U.S. Patent Application Publication 2019/0072912 (the '912 publication) is illustrative of the Apple Watch Series 4 and later devices. The Apple Watch Series 4 and later devices have, for example, such a wall:</p>  <p style="text-align: center;"><b>FIG. 4C</b></p>



U.S. Patent No. 10,702,194 Claim 1	Description of Accused Products
<p>a cover comprising a protruding convex surface, wherein the protruding convex surface is above all of the photodiodes of the first and second sets of photodiodes, wherein at least a portion of the protruding convex surface is rigid, and wherein the cover is above the wall; and</p>	<p>The Apple Watch Series 4 and later devices include a rigid protruding convex surface that is above all of the photodiodes of the first and second sets of photodiodes and the wall.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such a cover in the Apple Watch Series 4 and later devices:</p>  <p>FIG. 4A</p> <p>FIG. 4C</p>
<p>a handheld computing device in wireless communication with the physiological sensor device, wherein the handheld computing device comprises:</p>	<p>The Apple iPhone devices are in wireless communication with the physiological sensor device as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 
<p>one or more processors configured to wirelessly receive one or more signals from the physiological</p>	<p>The Apple iPhone devices include one or more processors configured to wirelessly receive one or more signals from the physiological sensor device, the one or more signals responsive to at least a physiological</p>

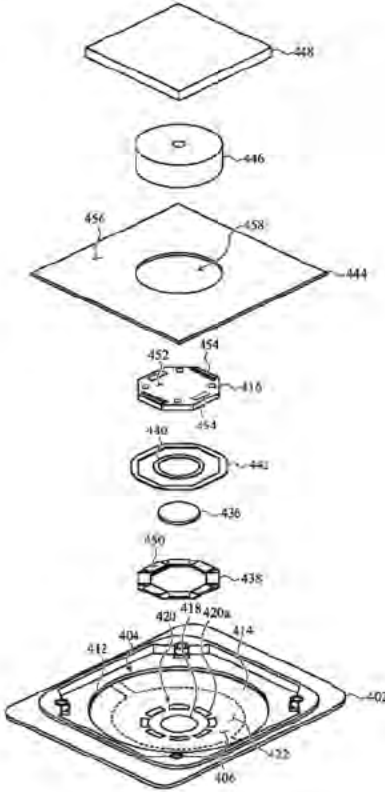
U.S. Patent No. 10,702,194 Claim 1	Description of Accused Products
<p>sensor device, the one or more signals responsive to at least a physiological parameter of the user;</p>	<p>parameter of the user as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 
<p>a touch-screen display configured to provide a user interface, wherein:</p>	<p>The Apple iPhone devices include a touch-screen display configured to provide a user interface as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 
<p>the user interface is configured to display indicia responsive to measurements of the physiological parameter, and</p>	<p>The Apple iPhone devices include a user interface configured to display indicia responsive to measurements of the physiological parameter as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>




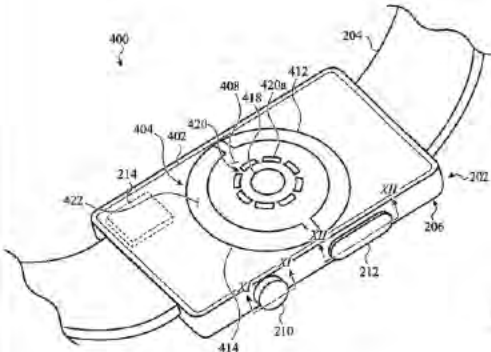
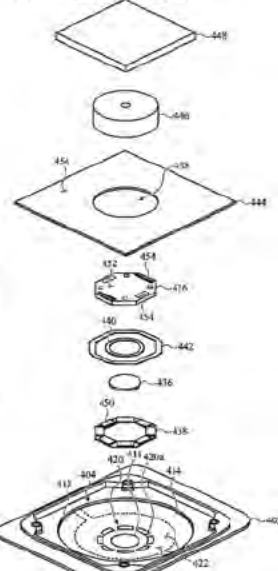
U.S. Patent No. 10,702,194 Claim 1	Description of Accused Products
	
<p>an orientation of the user interface is configurable responsive to a user input; and</p>	<p>The Apple iPhone devices have an orientation of the user interface that is configurable responsive to a user input as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204547">https://support.apple.com/en-us/HT204547</a>, <a href="https://support.apple.com/guide/watch/change-language-orientation-apple-watch-apd0bf18f46b/watchos">https://support.apple.com/guide/watch/change-language-orientation-apple-watch-apd0bf18f46b/watchos</a>.</p>
<p>a storage device configured to at least temporarily store at least the measurements of the physiological parameter.</p>	<p>The Apple iPhone devices include a storage device configured to at least temporarily store at least the measurements of the physiological parameter as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 

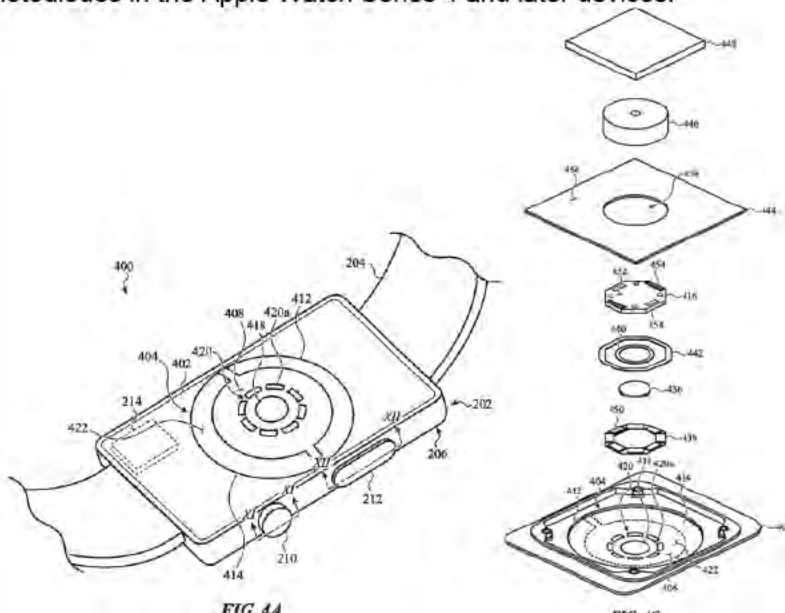

U.S. Patent No. 10,702,195

U.S. Patent No. 10,702,195 Claim 1	Description of Accused Products
<p>1. A user-worn physiological measurement device that defines a plurality of optical paths, the physiological measurement device comprising:</p>	<p>The Apple Watch Series 4 and later devices are user-worn physiological measurement devices that define a plurality of optical paths as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The diagram shows the back of an Apple Watch with various sensors labeled: 'Optical Heart Rate Sensor', 'Optical Skin Temperature Sensor', 'Optical Blood Oxygen Sensor', 'Optical Heart Rate Sensor', 'Optical Skin Temperature Sensor', 'Optical Blood Oxygen Sensor', 'Optical Heart Rate Sensor', 'Optical Skin Temperature Sensor', 'Optical Blood Oxygen Sensor'. To the right, a smartphone displays the 'Heart Rate' app interface showing a heart rate range of 43-163 BPM, a graph of heart rate over time, and a 'Resting Rate' of 55 BPM.</p>
<p>one or more emitters configured to emit light into tissue of a user;</p>	<p>The Apple Watch Series 4 and later devices include one or more emitters configured to emit light into tissue of a user as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The diagram shows the back of an Apple Watch with various sensors labeled: 'Optical Heart Rate Sensor', 'Optical Skin Temperature Sensor', 'Optical Blood Oxygen Sensor', 'Optical Heart Rate Sensor', 'Optical Skin Temperature Sensor', 'Optical Blood Oxygen Sensor', 'Optical Heart Rate Sensor', 'Optical Skin Temperature Sensor', 'Optical Blood Oxygen Sensor'. To the right, a smartphone displays the 'Heart Rate' app interface showing a heart rate range of 43-163 BPM, a graph of heart rate over time, and a 'Resting Rate' of 55 BPM.</p>

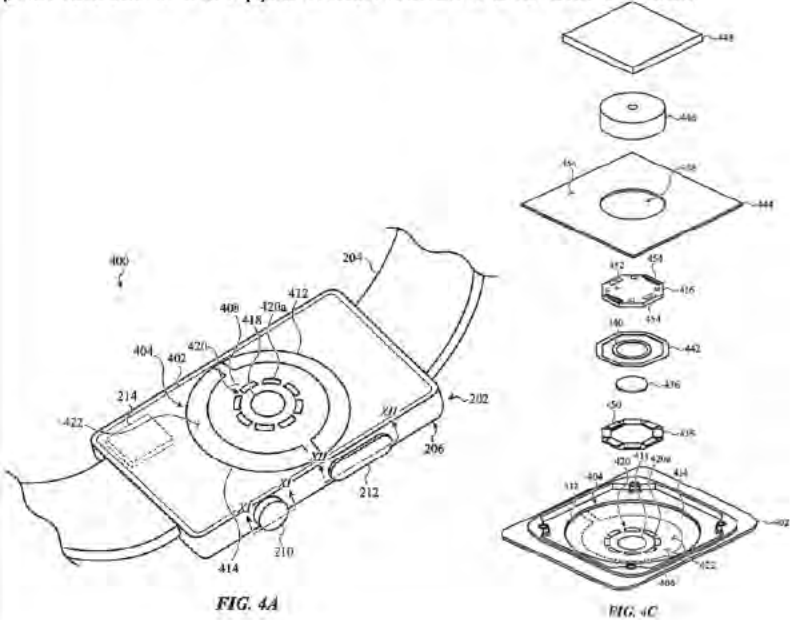
U.S. Patent No. 10,702,195 Claim 1	Description of Accused Products
<p>a first set of photodiodes positioned on a first surface and surrounded by a wall that is operably connected to the first surface, wherein:</p>	<p>The Apple Watch Series 4 and later devices include a first set of photodiodes positioned on a first surface and surrounded by a wall that is operably connected to the first surface.</p> <p>Fig. 4C of Apple's U.S. Patent Application Publication 2019/0072912 (the '912 publication) is illustrative of the Apple Watch Series 4 and later devices. The Apple Watch Series 4 and later devices have, for example, such a wall:</p>  <p style="text-align: center;">FIG. 4C</p>
<p>the first set of photodiodes comprises at least four photodiodes, and</p>	<p>The Apple Watch Series 4 and later devices include a first set of photodiodes comprising at least four photodiodes as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>

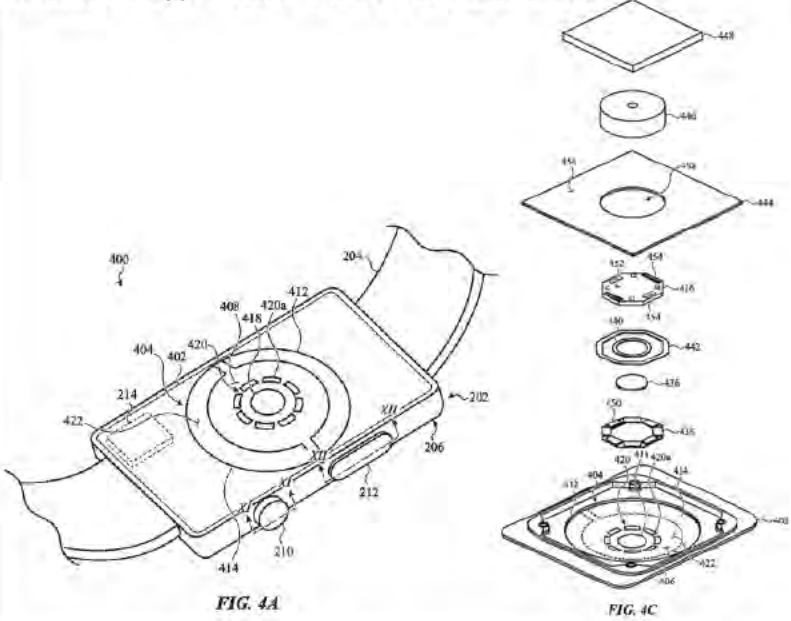





U.S. Patent No. 10,702,195 Claim 1	Description of Accused Products
	
<p>the photodiodes of the first set of photodiodes are connected to one another in parallel to provide a first signal stream;</p>	<p>Upon information and belief, the Apple Watch Series 4 and later devices include photodiodes connected to one another in parallel to provide a first signal stream.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such photodiodes in the Apple Watch Series 4 and later devices:</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;">   </div> <div style="display: flex; justify-content: space-around; align-items: center;"> <p><b>FIG. 4A</b></p> <p><b>FIG. 4C</b></p> </div>

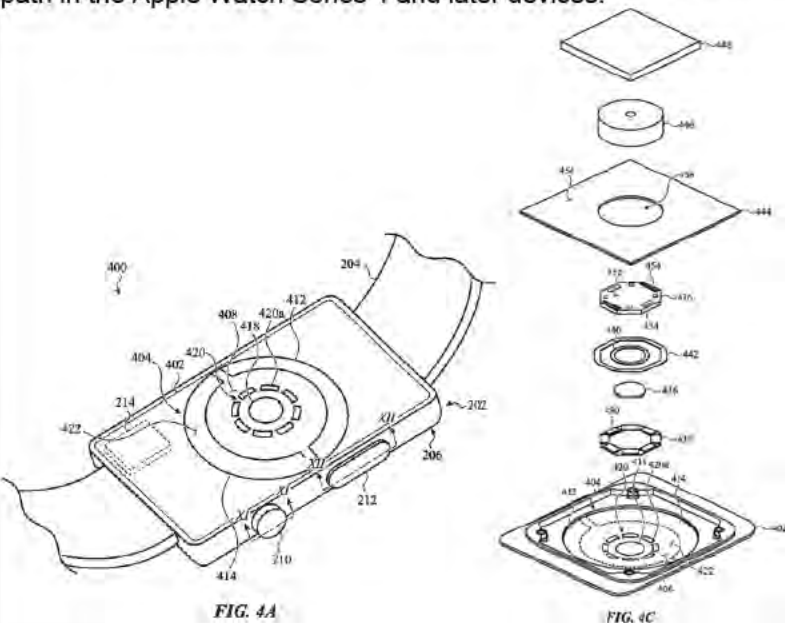
U.S. Patent No. 10,702,195 Claim 1	Description of Accused Products
<p>a second set of photodiodes positioned on the first surface and surrounded by the wall, wherein:</p>	<p>The Apple Watch Series 4 and later devices include a second set of photodiodes positioned on the first surface and surrounded by the wall.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such photodiodes in the Apple Watch Series 4 and later devices:</p>  <p>FIG. 4A</p> <p>FIG. 4C</p>
<p>the second set of photodiodes comprises at least four photodiodes, and</p>	<p>The Apple Watch Series 4 and later devices include a second set of photodiodes that comprises four photodiodes as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 



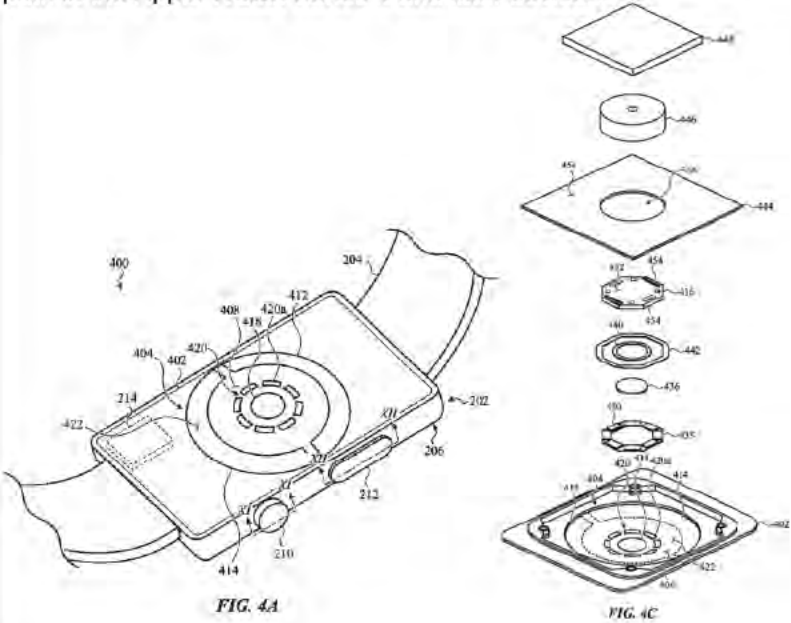
U.S. Patent No. 10,702,195 Claim 1	Description of Accused Products
<p>the photodiodes of the second set of photodiodes are connected to one another in parallel to provide a second signal stream; and</p>	<p>Upon information and belief, the Apple Watch Series 4 and later devices include photodiodes of the second set of photodiodes connected to one another in parallel to provide a second signal stream.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such photodiodes in the Apple Watch Series 4 and later devices:</p>  <p>FIG. 4A is a perspective view of a smartwatch (400) showing a display (204), a bezel (202), a crown (206), and a digital crown (210). A sensor assembly (402) is located on the back of the watch. FIG. 4C is an exploded view of the sensor assembly (402) showing various components including a top plate (428), a middle plate (444), a sensor chip (412), a lens (416), a frame (440), a gasket (418), a bottom plate (420), and a mounting bracket (414). The components are shown in their relative positions as they would be assembled.</p>

U.S. Patent No. 10,702,195 Claim 1	Description of Accused Products
<p>a cover located above the wall and comprising a single protruding convex surface configured to be located between tissue of the user and the first and second sets of photodiodes when the physiological measurement device is worn by the user,</p>	<p>The Apple Watch Series 4 and later devices include a cover located above the wall and comprising a single protruding convex surface configured to be located between tissue of the user and the first and second sets of photodiodes when the physiological measurement device is worn by the user.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such a cover in the Apple Watch Series 4 and later devices:</p>  <p>FIG. 4A is a perspective view of the Apple Watch Series 4 and later devices showing the cover assembly. FIG. 4C is an exploded view diagram of the cover assembly, showing various components including the cover, the first and second sets of photodiodes, and the first and second sets of LEDs.</p>
<p>wherein the physiological measurement device provides a plurality of optical paths, wherein each of the optical paths:</p>	<p>The Apple Watch Series 4 and later devices provide a plurality of optical paths as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The image shows the Apple Watch Series 4 and later devices displaying the heart rate measurement interface. The Apple Watch screen shows a heart rate of 55 bpm and a resting heart rate of 55 bpm. The iPhone screen shows a heart rate of 43-163 bpm and a resting heart rate of 55 bpm. The background image shows the internal components of the Apple Watch, including the heart rate sensor and the optical paths.</p>



U.S. Patent No. 10,702,195 Claim 1	Description of Accused Products
<p>exits an emitter of the one or more emitters,</p>	<p>The Apple Watch Series 4 and later devices include an optical path that exits an emitter of the one or more emitters as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The diagram shows the heart rate sensor components of the Apple Watch Series 4. It includes a circular array of emitters (green and red LEDs) and a central sensor unit. Labels indicate 'Optical Emitter', 'Infrared LED', 'Optical Emitter', 'Infrared LED', and 'Optical Emitter'. To the right, a smartphone displays the 'Heart Rate' app interface, showing a heart rate range of 43-163 BPM, a resting rate of 55 BPM, and a 'Highlights' section with 'Powerful Sleep' and 'Workout'.</p>
<p>passes through tissue of the user,</p>	<p>The Apple Watch Series 4 and later devices include optical paths that pass through tissue of the user as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The diagram shows the heart rate sensor components of the Apple Watch Series 4. It includes a circular array of emitters (green and red LEDs) and a central sensor unit. Labels indicate 'Optical Emitter', 'Infrared LED', 'Optical Emitter', 'Infrared LED', and 'Optical Emitter'. To the right, a smartphone displays the 'Heart Rate' app interface, showing a heart rate range of 43-163 BPM, a resting rate of 55 BPM, and a 'Highlights' section with 'Powerful Sleep' and 'Workout'.</p>

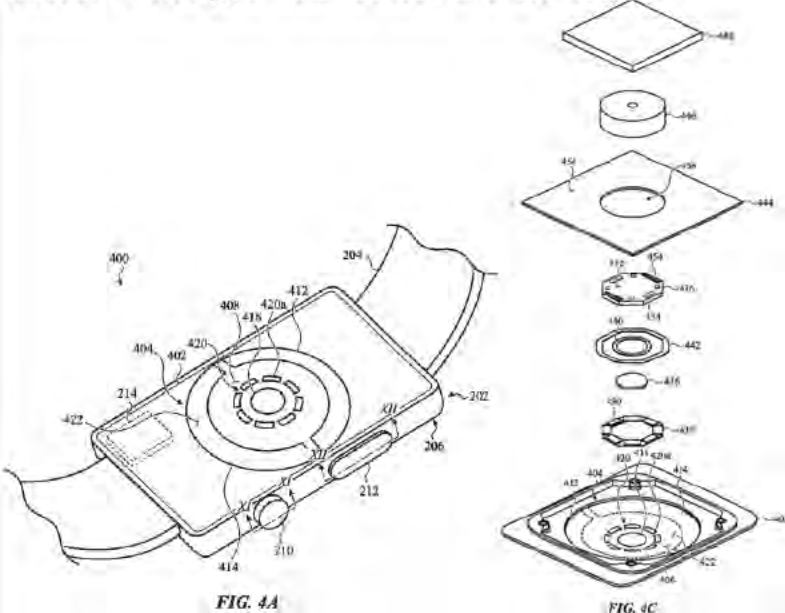
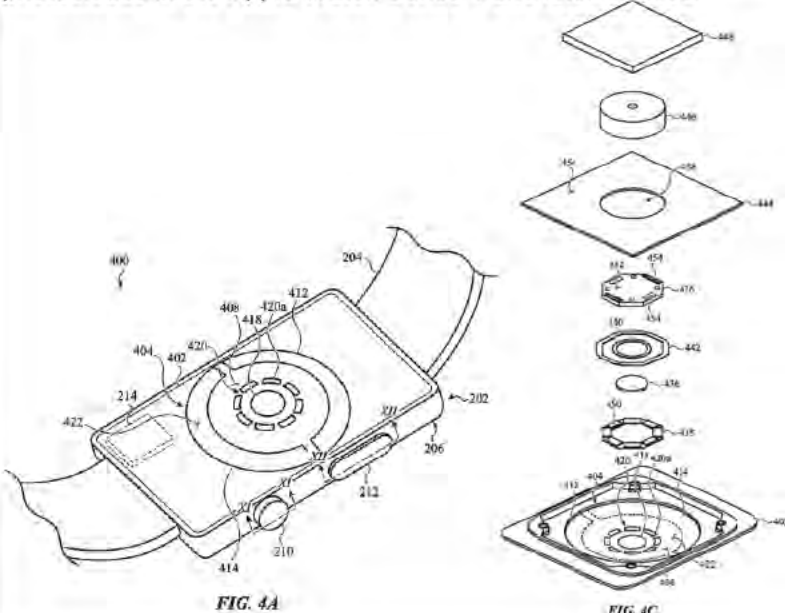
U.S. Patent No. 10,702,195 Claim 1	Description of Accused Products
<p>passes through the single protruding convex surface, and</p>	<p>The Apple Watch Series 4 and later devices include optical paths that pass through the single protruding convex surface.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such a path in the Apple Watch Series 4 and later devices:</p>  <p>FIG. 4A</p> <p>FIG. 4C</p>



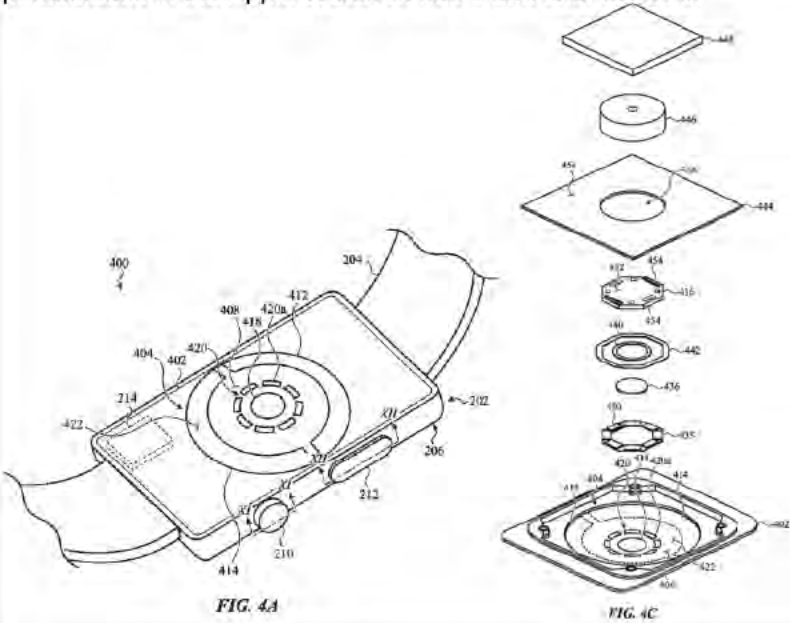
U.S. Patent No. 10,702,195 Claim 1	Description of Accused Products
<p>arrives at a corresponding photodiode of the at least one of the first or second sets of photodiodes, the corresponding photodiode configured to receive light emitted by the emitter after traversal by the light of a corresponding optical path of the plurality of optical paths and after attenuation of the light by tissue of the user.</p>	<p>The Apple Watch Series 4 and later devices provide an optical path that arrives at a corresponding photodiode of the at least one of the first or second sets of photodiodes, the corresponding photodiode configured to receive light emitted by the emitter after traversal by the light of a corresponding optical path of the plurality of optical paths and after attenuation of the light by tissue of the user.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such a path in the Apple Watch Series 4 and later devices:</p>  <p>FIG. 4A is a perspective view of a smartwatch (400) showing an optical sensor assembly (202) on the back. The assembly includes a display (204), a camera (206), and a heart rate sensor (210). The optical sensor assembly (202) is shown in a cross-sectional view, revealing internal components such as a light source (402), a lens (404), a filter (406), a photodiode (408), and a microcontroller (410). The optical path is shown as a series of arrows originating from the light source (402), passing through the lens (404), filter (406), and photodiode (408), and finally reaching the microcontroller (410).</p> <p>FIG. 4C is a perspective view of the optical sensor assembly (202) showing its internal components. The assembly includes a light source (402), a lens (404), a filter (406), a photodiode (408), and a microcontroller (410). The optical path is shown as a series of arrows originating from the light source (402), passing through the lens (404), filter (406), and photodiode (408), and finally reaching the microcontroller (410).</p>

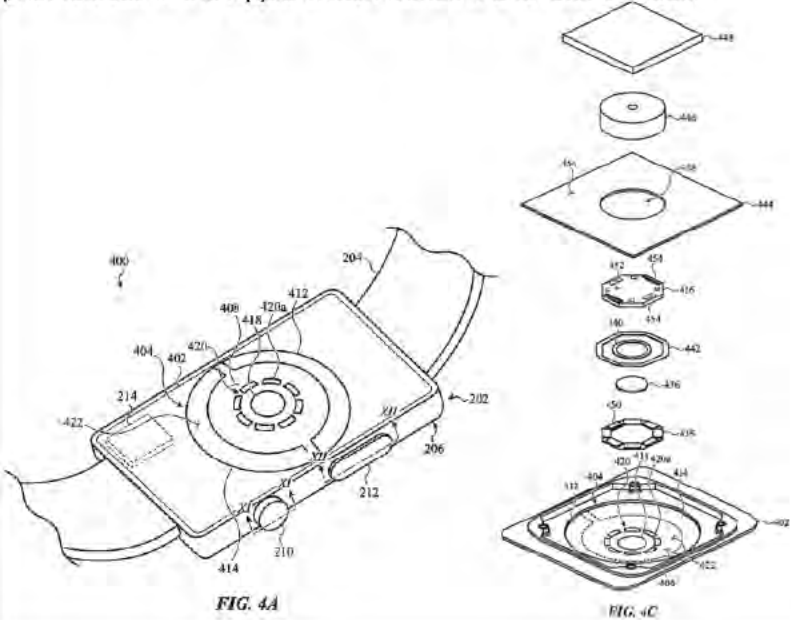
U.S. Patent No. 10,709,366

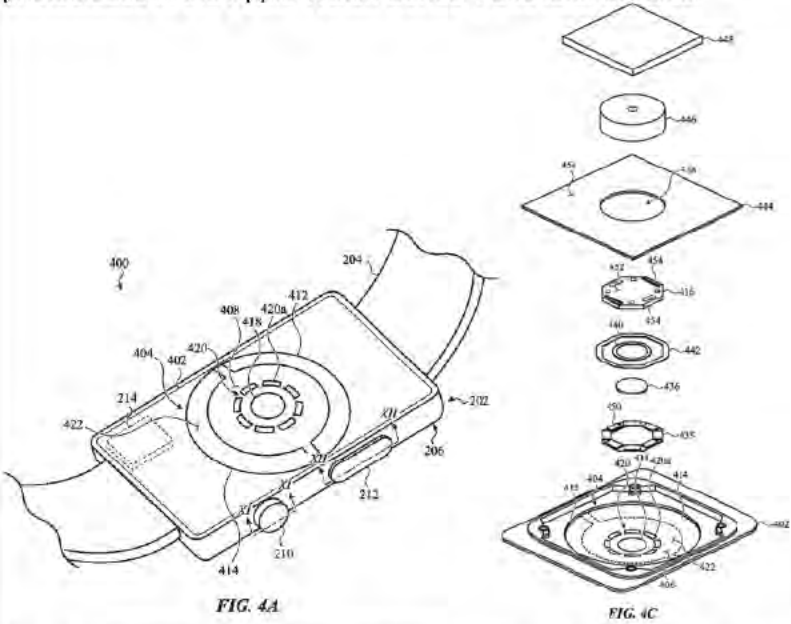

U.S. Patent No. 10,709,366 Claim 1	Description of Accused Products
<p>1. A noninvasive physiological parameter measurement device adapted to be worn by a wearer, the noninvasive physiological parameter measurement device comprising:</p>	<p>The Apple Watch Series 4 and later devices are noninvasive physiological parameter measurement devices adapted to be worn by a wearer as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The diagram illustrates the back of an Apple Watch Series 4, highlighting its noninvasive sensors: optical heart rate sensor, infrared heart rate sensor, and infrared LED. To the right, a smartphone displays the Apple Health app's heart rate section, showing a range of 43-163 BPM, a resting heart rate of 55 BPM, and a heart rate graph over time.</p>
<p>one or more light emitters;</p>	<p>The Apple Watch Series 4 and later devices include one or more light emitters as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>This diagram is identical to the one in the first row, showing the back of the Apple Watch Series 4 with its sensors and a smartphone displaying heart rate data.</p>

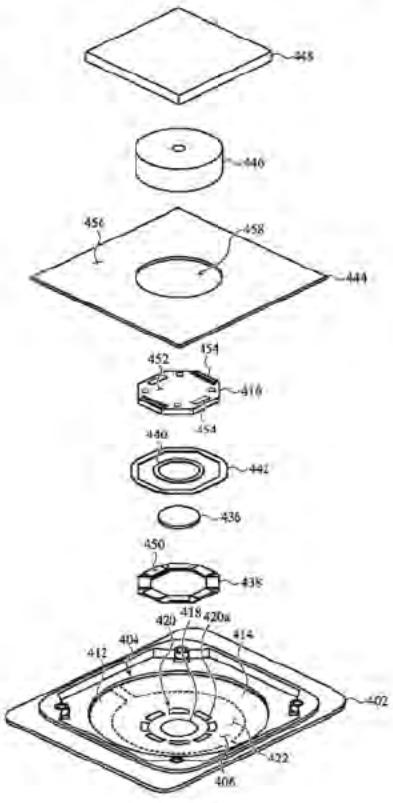
U.S. Patent No. 10,709,366 Claim 1	Description of Accused Products
<p>a substrate having a surface;</p>	<p>The Apple Watch Series 4 and later devices include a substrate having a surface.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such substrate in the Apple Watch Series 4 and later devices:</p>  <p>FIG. 4A</p> <p>FIG. 4C</p>
<p>a first set of photodiodes arranged on the surface and spaced apart from each other, wherein:</p>	<p>The Apple Watch Series 4 and later devices include a first set of photodiodes arranged on the surface and spaced apart from each other.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such photodiodes in the Apple Watch Series 4 and later devices:</p>  <p>FIG. 4A</p> <p>FIG. 4C</p>



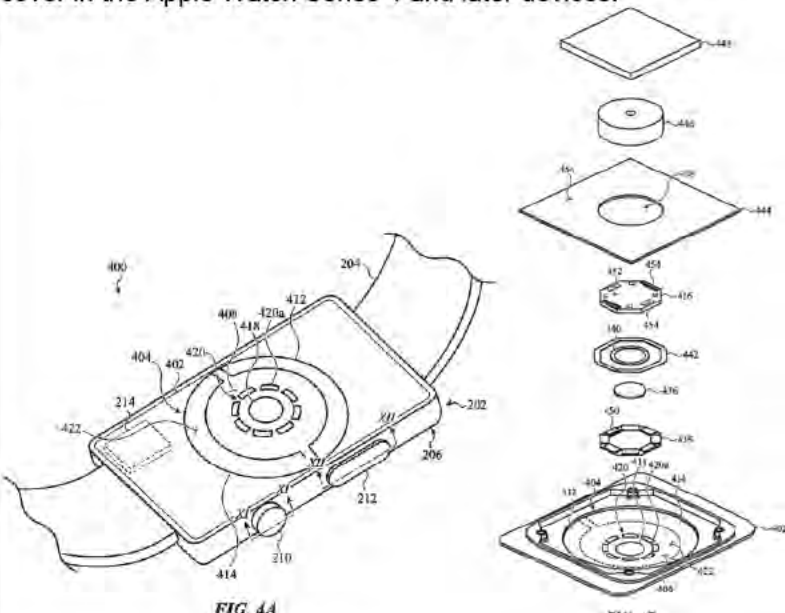
U.S. Patent No. 10,709,366 Claim 1	Description of Accused Products
<p>the first set of photodiodes comprises at least four photodiodes, and the photodiodes of the first set of photodiodes are connected to one another in parallel to provide a first signal stream responsive to light from at least one of the one or more light emitters attenuated by body tissue;</p>	<p>Upon information and belief, the Apple Watch Series 4 and later devices include the first set of photodiodes comprises at least four photodiodes, and the photodiodes of the first set of photodiodes are connected to one another in parallel to provide a first signal stream responsive to light from at least one of the one or more light emitters attenuated by body tissue.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such photodiodes in the Apple Watch Series 4 and later devices:</p>  <p>FIG. 4A is a perspective view of a wrist-worn device 400. It shows a band 202 attached to a case 204. The case 204 features a display 210, a crown 212, and a sensor assembly 214. The sensor assembly 214 includes a circular array of photodiodes 408 and 412, and a light emitter 404. The device is shown being worn on a wrist 206.</p> <p>FIG. 4C is an exploded view of the sensor assembly 214. It shows a top layer 448, a middle layer 446, a bottom layer 444, and a central component 442. The central component 442 includes a circular array of photodiodes 412 and 414, and a light emitter 416. The assembly is shown being mounted onto a substrate 404.</p>

U.S. Patent No. 10,709,366 Claim 1	Description of Accused Products
<p>a second set of photodiodes arranged on the surface and spaced apart from each other, wherein:</p>	<p>The Apple Watch Series 4 and later devices include a second set of photodiodes arranged on the surface and spaced apart from each other.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such photodiodes in the Apple Watch Series 4 and later devices:</p>  <p>FIG. 4A is a perspective view of an Apple Watch Series 4 and later device 400. The device includes a display 202, a bezel 204, a crown 206, and a side button 210. A second set of photodiodes 412 is arranged on the back surface of the device. FIG. 4C is an exploded view of the photodiode assembly. It shows a top layer 428, a middle layer 430, a bottom layer 432, and a substrate 434. The photodiodes 412 are arranged on the substrate 434. The exploded view also shows a ring 440, a ring 442, a ring 444, a ring 446, a ring 448, and a ring 450. The exploded view shows the assembly of the photodiode assembly onto the device.</p>


U.S. Patent No. 10,709,366 Claim 1	Description of Accused Products
<p>the second set of photodiodes comprises at least four photodiodes, the photodiodes of the second set of photodiodes are connected to one another in parallel to provide a second signal stream responsive to light from at least one of the one or more light emitters attenuated by body tissue, and</p>	<p>Upon information and belief, the Apple Watch Series 4 and later devices include a second set of photodiodes that comprise at least four photodiodes, the photodiodes of the second set of photodiodes are connected to one another in parallel to provide a second signal stream responsive to light from at least one of the one or more light emitters attenuated by body tissue.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such photodiodes in the Apple Watch Series 4 and later devices:</p>  <p>FIG. 4A</p> <p>FIG. 4C</p>
<p>at least one of the first signal stream or the second signal stream includes information usable to determine a physiological parameter of a wearer of the noninvasive physiological parameter measurement device;</p>	<p>The Apple Watch Series 4 and later devices are configured to provide at least one of a first signal stream or a second signal stream that includes information usable to determine a physiological parameter of a wearer of the noninvasive physiological parameter measurement device as shown on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p> 


U.S. Patent No. 10,709,366 Claim 1	Description of Accused Products
<p>a wall extending from the surface and configured to surround at least the first and second sets of photodiodes; and</p>	<p>The Apple Watch Series 4 and later devices include a wall extending from the surface and configured to surround at least the first and second sets of photodiodes.</p> <p>Fig. 4C of Apple's U.S. Patent Application Publication 2019/0072912 (the '912 publication) is illustrative of the Apple Watch Series 4 and later devices. The Apple Watch Series 4 and later devices have, for example, such a wall:</p>  <p style="text-align: center;"><b>FIG. 4C</b></p>




U.S. Patent No. 10,709,366 Claim 1	Description of Accused Products
<p>a cover arranged to cover at least a portion of the surface of the substrate, wherein the cover comprises a protrusion that extends over all of the photodiodes of the first and second sets of photodiodes arranged on the surface, and wherein the cover is further configured to cover the wall.</p>	<p>The Apple Watch Series 4 and later devices include a protrusion that extends over all of the photodiodes of the first and second sets of photodiodes arranged on the surface and the wall.</p> <p>Figs. 4A and 4C of Apple's '912 publication are illustrative of such a cover in the Apple Watch Series 4 and later devices:</p>  <p>FIG. 4A</p> <p>FIG. 4C</p>

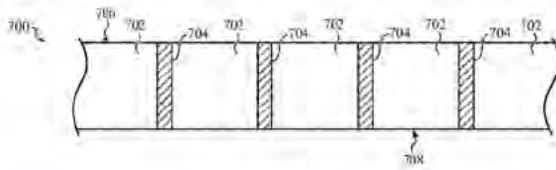
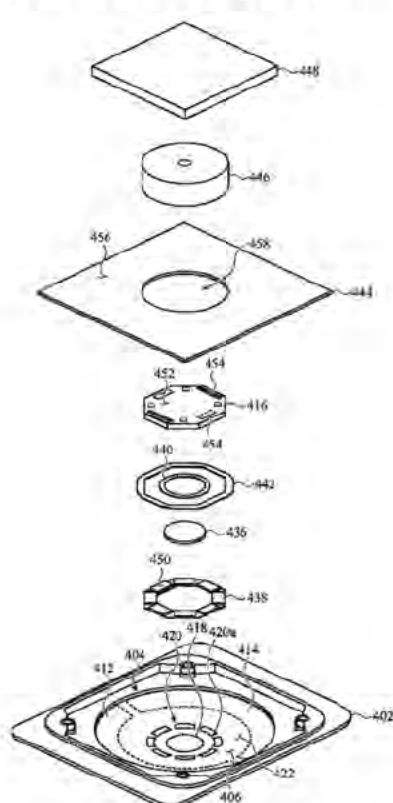
**U.S. Patent No. 6,771,994**

U.S. Patent No. 6,771,994 Claim 15	Description of Accused Products
<p>15. A sensor which generates at least first and second intensity signals from a light-sensitive detector which detects light of at least first and second wavelengths transmitted through body tissue carrying pulsing blood; the sensor comprising:</p>	<p>The Apple Watch Series 4 and later devices are sensors that generate at least first and second intensity signals from a light-sensitive detector which detects light of at least first and second wavelengths transmitted through body tissue carrying pulsing blood.</p> <p>The Apple Watch Series 4 and later devices include a plurality of emitters of different wavelengths (for example, green and infrared LEDs) and at least four detectors (for example, photodiode sensors) as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The emitters and detectors are used to monitor physiological parameters, such as pulse rate. See <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>

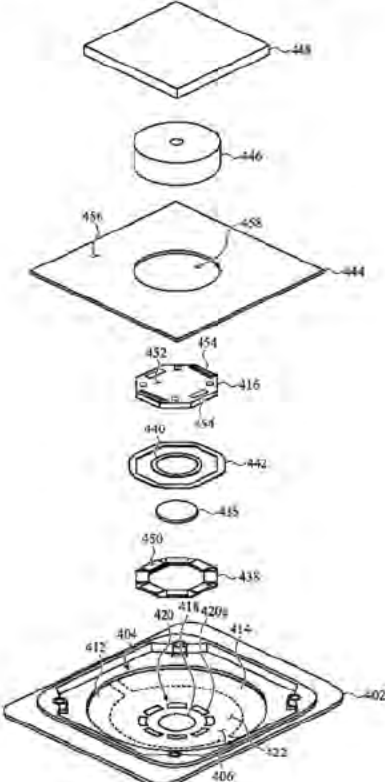
U.S. Patent No. 6,771,994 Claim 15	Description of Accused Products
at least one light emission device;	<p>The Apple Watch Series 4 and later devices include at least one light emission device. The Apple Watch Series 4 and later devices include green and infrared LEDs as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The Apple Watches Series 4 and later devices are worn on the wrist such that the detectors are configured to detect light that has passed through tissue and is indicative of a physiological parameter of the wearer:</p> <p>The optical heart sensor in Apple Watch uses what is known as photoplethysmography. This technology, while difficult to pronounce, is based on a very simple fact: Blood is red because it reflects red light and absorbs green light. Apple Watch uses green LED lights paired with light-sensitive photodiodes to detect the amount of blood flowing through your wrist at any given moment. When your heart beats, the blood flow in your wrist — and the green light absorption — is greater. Between beats, it's less. By flashing its LED lights hundreds of times per second, Apple Watch can calculate the number of times the heart beats each minute — your heart rate. The optical heart sensor supports a range of 30–210 beats per minute. In addition, the optical heart sensor is designed to compensate for low signal levels by increasing both LED brightness and sampling rate.</p> <p><a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>




U.S. Patent No. 6,771,994 Claim 15	Description of Accused Products
<p>a light sensitive detector; and</p>	<p>The Apple Watch Series 4 and later devices include a light sensitive detector. The Apple Watch Series 4 and later devices include eight photodiode sensors as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The Apple Watches Series 4 and later devices are worn on the wrist such that the detectors are configured to detect light that has passed through tissue and is indicative of a physiological parameter of the wearer:</p> <p>The optical heart sensor in Apple Watch uses what is known as photoplethysmography. This technology, while difficult to pronounce, is based on a very simple fact: Blood is red because it reflects red light and absorbs green light. Apple Watch uses green LED lights paired with light-sensitive photodiodes to detect the amount of blood flowing through your wrist at any given moment. When your heart beats, the blood flow in your wrist — and the green light absorption — is greater. Between beats, it's less. By flashing its LED lights hundreds of times per second, Apple Watch can calculate the number of times the heart beats each minute — your heart rate. The optical heart sensor supports a range of 30–210 beats per minute. In addition, the optical heart sensor is designed to compensate for low signal levels by increasing both LED brightness and sampling rate.</p> <p><a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>
<p>a plurality of louvers positioned over the light sensitive detector to accept light from the at least one light emission device originating from a general direction of the at least one light emission device and then transmitting through</p>	<p>The Apple Watch Series 4 and later devices include a plurality of louvers positioned over the light sensitive detector to accept light from the at least one light emission device originating from a general direction of the at least one light emission device and then transmitting through body tissue carrying pulsing blood, wherein the louvers accept the light when the sensor is properly applied to tissue of a patient. Fig. 7 of Apple's U.S. Patent Application Publication 2019/0090806 (the '806 publication) is illustrative of the Apple Watch Series 4 and later devices. The Apple Watch Series 4 and later devices have, for example, a</p>


U.S. Patent No. 6,771,994 Claim 15	Description of Accused Products
<p>body tissue carrying pulsing blood, wherein the louvers accept the light when the sensor is properly applied to tissue of a patient.</p>	<p>plurality of louvers positioned over the light sensitive detector to accept light from the at least one light emission device originating from a general direction of the at least one light emission device and then transmitting through body tissue carrying pulsing blood:</p>  <p style="text-align: center;">FIG. 7</p>
<p>a light block forming an enclosing wall between the light emission source and the plurality of detectors, the light block defining the circular portion of the tissue measurement site, the light emission source arranged proximate a first side of the enclosing wall and the plurality of detectors arranged proximate a second side of the enclosing wall, the first side being different than the second side,</p>	<p>The Apple Watch Series 4 and later devices include a light block forming an enclosing wall between the light emission source and the plurality of detectors, the light block defining the circular portion of the tissue measurement site, the light emission source arranged proximate a first side of the enclosing wall and the plurality of detectors arranged proximate a second side of the enclosing wall, the first side being different than the second side. Fig. 4C of Apple's U.S. Patent Application Publication 2019/0072912 (the '912 publication) is illustrative of the Apple Watch Series 4 and later devices. The Apple Watch Series 4 and later devices have, for example, a wall with LEDs arranged in the interior of the enclosing wall and photodiode sensors arranged on the exterior of the enclosing wall:</p>  <p style="text-align: center;">FIG. 4C</p>




U.S. Patent No. 6,771,994 Claim 15	Description of Accused Products
<p>wherein the enclosing wall prevents at least a portion of light emitted from the light emission source from being detected by the plurality of detectors without attenuation by the tissue, and wherein the plurality of detectors are arranged in an array having a spatial configuration corresponding to the circular portion of the tissue measurement site.</p>	<p>The Apple Watch Series 4 and later devices have an enclosing wall that prevents at least a portion of light emitted from the light emission source from being detected by the plurality of detectors without attenuation by the tissue, and wherein the plurality of detectors are arranged in an array having a spatial configuration corresponding to the circular portion of the tissue measurement site. Fig. 4C of Apple's U.S. Patent Application Publication 2019/0072912 (the '912 publication) is illustrative of the Apple Watch Series 4 and later devices. The Apple Watch Series 4 and later devices have, for example, a wall with LEDs arranged in the interior of the enclosing wall and photodiode sensors arranged on the exterior of the circular enclosing wall:</p>  <p>The diagram shows an exploded view of a circular sensor assembly. At the top is a square plate (448). Below it is a circular ring (446). The next component is a square plate (444) with a central circular opening (458) and four corner openings (456). Below this is a circular ring (432) with four small rectangular features (454). The next component is a circular ring (440) with four small rectangular features (442). Below this is a circular ring (418) with four small rectangular features (416). The bottom component is a square plate (402) with a central circular opening (420) and four corner openings (412). The central opening (420) contains a circular sensor array (406) with four small rectangular features (414). The corner openings (412) contain four small rectangular features (404).</p> <p style="text-align: center;"><b>FIG. 4C</b></p>

**U.S. Patent No. 8,457,703**

U.S. Patent No. 8,457,703 Claim 1	Description of Accused Products
<p>1. A method of managing power consumption during continuous patient monitoring by adjusting behavior of a patient monitor, the method comprising:</p>	<p>The Apple Watch Series 3 and later devices manage power consumption during continuous patient monitoring by adjusting behavior of a patient monitor.</p> <p>The Apple Watch Series 3 and later devices include a plurality of emitters of different wavelengths (for example, green and infrared LEDs) and detectors (for example, photodiode sensors) as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The emitters and detectors are used to monitor physiological parameters, such as pulse rate. See <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>

U.S. Patent No. 8,457,703 Claim 1	Description of Accused Products
driving one or more light sources configured to emit light into tissue of a monitored patient;	<p>The Apple Watch Series 3 and later devices drive one or more light sources configured to emit light into tissue of a monitored patient. The Apple Watch Series 3 and later devices include green and infrared LEDs as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The Apple Watches Series 3 and later devices are worn on the wrist such that the detectors are configured to detect light that has passed through tissue and is indicative of a physiological parameter of the wearer:</p> <p>The optical heart sensor in Apple Watch uses what is known as photoplethysmography. This technology, while difficult to pronounce, is based on a very simple fact: Blood is red because it reflects red light and absorbs green light. Apple Watch uses green LED lights paired with light-sensitive photodiodes to detect the amount of blood flowing through your wrist at any given moment. When your heart beats, the blood flow in your wrist — and the green light absorption — is greater. Between beats, it's less. By flashing its LED lights hundreds of times per second, Apple Watch can calculate the number of times the heart beats each minute — your heart rate. The optical heart sensor supports a range of 30–210 beats per minute. In addition, the optical heart sensor is designed to compensate for low signal levels by increasing both LED brightness and sampling rate.</p> <p>The optical heart sensor can also use infrared light. This mode is what Apple Watch uses when it measures your heart rate in the background, and for heart rate notifications. Apple Watch uses green LED lights to measure your heart rate during workouts and Breathe sessions, and to calculate walking average and Heart Rate Variability (HRV).</p> <p><a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>




U.S. Patent No. 8,457,703 Claim 1	Description of Accused Products
<p>receiving one or more signals from one or more detectors configured to detect said light after attenuation by said tissue;</p>	<p>The Apple Watch Series 3 and later devices receive one or more signals from one or more detectors configured to detect said light after attenuation by said tissue. The Apple Watch Series 3 and later devices include eight photodiode sensors as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The Apple Watches Series 3 and later devices are worn on the wrist such that the detectors are configured to detect light that has passed through tissue and is indicative of a physiological parameter of the wearer:</p> <p>The optical heart sensor in Apple Watch uses what is known as photoplethysmography. This technology, while difficult to pronounce, is based on a very simple fact: Blood is red because it reflects red light and absorbs green light. Apple Watch uses green LED lights paired with light-sensitive photodiodes to detect the amount of blood flowing through your wrist at any given moment. When your heart beats, the blood flow in your wrist — and the green light absorption — is greater. Between beats, it's less. By flashing its LED lights hundreds of times per second, Apple Watch can calculate the number of times the heart beats each minute — your heart rate. The optical heart sensor supports a range of 30–210 beats per minute. In addition, the optical heart sensor is designed to compensate for low signal levels by increasing both LED brightness and sampling rate.</p> <p>The optical heart sensor can also use infrared light. This mode is what Apple Watch uses when it measures your heart rate in the background, and for heart rate notifications. Apple Watch uses green LED lights to measure your heart rate during workouts and Breathe sessions, and to calculate walking average and Heart Rate Variability (HRV).</p> <p><a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>

U.S. Patent No. 8,457,703 Claim 1	Description of Accused Products
continuously operating a patient monitor at a lower power consumption level to determine measurement values for one or more physiological parameters of a patient;	<p>The Apple Watch Series 3 and later devices continuously operate a patient monitor at a lower power consumption level to determine measurement values for one or more physiological parameters of a patient.</p> <p>The Apple Watches Series 3 and later devices transmit recorded data to the Health App on iOS devices. Upon information and belief, the pulse rate determination, the types of LEDs used to determine pulse rate, and the operation of the LEDs varies with pulse rate activity and heart rate context (e.g., background, sedentary, streaming, etc.), as described in International Application Publication WO 2018/226305 (the '305 publication), for example, at paragraphs [0055]-[0061].</p> <p>See also <a href="https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate">https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate</a>.</p>
comparing processing characteristics to a predetermined threshold; and	<p>Upon information and belief, the Apple Watches Series 3 and later devices compare processing characteristics to a predetermined threshold.</p> <p>The Apple Watches Series 3 and later devices transmit recorded data to the Health App on iOS devices. Upon information and belief, the pulse rate determination, the types of LEDs used to determine pulse rate, and the operation of the LEDs varies with pulse rate activity and heart rate context (e.g., background, sedentary, streaming, etc.).</p> <p>See also <a href="https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate">https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate</a>.</p>
when said processing characteristics pass said threshold, transitioning to continuously operating said patient monitor at a higher power consumption level, wherein said continuously operating at said lower power consumption level comprises reducing activation of an attached sensor, said sensor positioning said light sources and said detectors proximate said tissue.	<p>Upon information and belief, the Apple Watches Series 3 and later devices transition to continuously operating said patient monitor at a higher power consumption level.</p> <p>Upon information and belief, the Apple Watches Series 3 and later devices continuously operating at said lower power consumption level corresponds with reducing activation of an attached sensor, said sensor positioning said light sources and said detectors proximate said tissue.</p> <p>The Apple Watches Series 3 and later devices transmit recorded data to the Health App on iOS devices. Upon information and belief, the pulse rate determination, the types of LEDs used to determine pulse rate, and the operation of the LEDs varies with pulse rate activity and heart rate context (e.g., background, sedentary, streaming, etc.), as described in International Application Publication WO 2018/226305 (the '305 publication), for example, at paragraphs [0055]-[0061].</p> <p>See also <a href="https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate">https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate</a>.</p>



U.S. Patent No. 10,433,776

U.S. Patent No. 10,433,776 Claim 1	Description of Accused Products
<p>1. A method of operating a patient monitor configured to monitor at least a pulse rate of a patient by processing signals responsive to light attenuated by body tissue, the method comprising:</p>	<p>The Apple Watch Series 3 and later devices monitor at least a pulse rate of a patient by processing signals responsive to light attenuated by body tissue.</p> <p>The Apple Watch Series 3 and later devices include a plurality of emitters of different wavelengths (for example, green and infrared LEDs) and detectors (for example, photodiode sensors) as found on the Apple website at <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>:</p>  <p>The emitters and detectors are used to monitor physiological parameters, such as pulse rate. See <a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a></p>
<p>operating the patient monitor according to a first control protocol, wherein said operating includes activating a first control protocol light source in accordance with the first control protocol, the first control protocol light source including one or more of a plurality of light sources;</p>	<p>The Apple Watch Series 3 and later devices operate according to a first control protocol, wherein said operating includes activating a first control protocol light source in accordance with the first control protocol, the first control protocol light source including one or more of a plurality of light sources.</p> <p>The Apple Watches Series 3 and later devices transmit recorded data to the Health App on iOS devices. Upon information and belief, the pulse rate determination, the types of LEDs used to determine pulse rate, and the operation of the LEDs varies with pulse rate activity and heart rate context (e.g., background, sedentary, streaming, etc.), as described in International Application Publication WO 2018/226305 (the '305 publication), for example, at paragraphs [0055]-[0061].</p> <p>See also <a href="https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate">https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate</a>.</p>

U.S. Patent No. 10,433,776 Claim 1	Description of Accused Products
<p>when operating according to the first control protocol, calculating, by the patient monitor, measurement values of the pulse rate, the measurement values responsive to light from the first control protocol light source, detected by a detector of an optical sensor after attenuation by body tissue of the patient using the patient monitor;</p>	<p>The Apple Watch Series 3 and later devices calculate measurement values of the pulse rate, the measurement values responsive to light from the first control protocol light source, detected by a detector of an optical sensor after attenuation by body tissue of the patient using the patient monitor:</p> <p>The optical heart sensor in Apple Watch uses what is known as photoplethysmography. This technology, while difficult to pronounce, is based on a very simple fact: Blood is red because it reflects red light and absorbs green light. Apple Watch uses green LED lights paired with light-sensitive photodiodes to detect the amount of blood flowing through your wrist at any given moment. When your heart beats, the blood flow in your wrist — and the green light absorption — is greater. Between beats, it's less. By flashing its LED lights hundreds of times per second, Apple Watch can calculate the number of times the heart beats each minute — your heart rate. The optical heart sensor supports a range of 30–210 beats per minute. In addition, the optical heart sensor is designed to compensate for low signal levels by increasing both LED brightness and sampling rate.</p> <p>The optical heart sensor can also use infrared light. This mode is what Apple Watch uses when it measures your heart rate in the background, and for heart rate notifications. Apple Watch uses green LED lights to measure your heart rate during workouts and Breathe sessions, and to calculate walking average and Heart Rate Variability (HRV).</p> <p><a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>
<p>generating a trigger signal, wherein generating said trigger signal is responsive to at least one of: a comparison of processing characteristics to a predetermined threshold, a physiological event, or signal quality characteristics of signals received from the detector;</p>	<p>The Apple Watch Series 3 and later devices generate a trigger signal, wherein generating said trigger signal is responsive to at least one of: a comparison of processing characteristics to a predetermined threshold, a physiological event, or signal quality characteristics of signals received from the detector.</p> <p>The Apple Watches Series 3 and later devices transmit recorded data to the Health App on iOS devices. Upon information and belief, the pulse rate determination, the types of LEDs used to determine pulse rate, and the operation of the LEDs varies with pulse rate activity and heart rate context (e.g., background, sedentary, streaming, etc.), as described in International Application Publication WO 2018/226305 (the '305 publication), for example, at paragraphs [0055]–[0061].</p> <p>See also <a href="https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate">https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate</a>.</p>

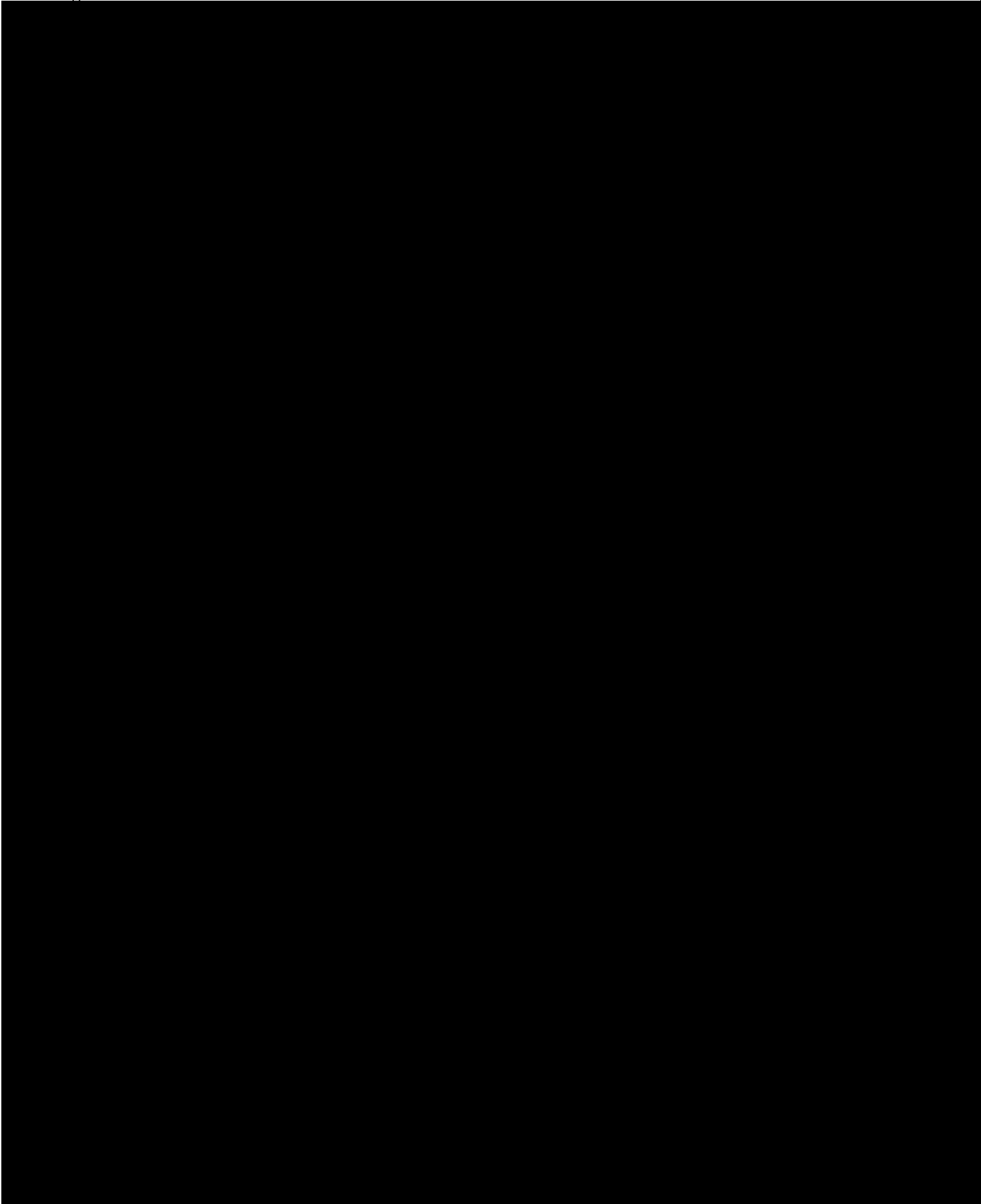
U.S. Patent No. 10,433,776 Claim 1	Description of Accused Products
<p>in response to receiving the trigger signal, operating the patient monitor according to a second control protocol different from the first control protocol, wherein said operating includes activating a second control protocol light source in accordance with the second control protocol, the second control protocol light source including one or more of the plurality of light sources; and</p>	<p>The Apple Watch Series 3 and later devices in response to receiving the trigger signal, operate according to a second control protocol different from the first control protocol, wherein said operating includes activating a second control protocol light source in accordance with the second control protocol, the second control protocol light source including one or more of the plurality of light sources.</p> <p>The Apple Watches Series 3 and later devices transmit recorded data to the Health App on iOS devices. Upon information and belief, the pulse rate determination, the types of LEDs used to determine pulse rate, and the operation of the LEDs varies with pulse rate activity and heart rate context (e.g., background, sedentary, streaming, etc.), as described in International Application Publication WO 2018/226305 (the '305 publication), for example, at paragraphs [0055]-[0061].</p> <p>See also <a href="https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate">https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate</a>.</p>
<p>when operating the patient monitor according to the second control protocol, calculating the measurement values of the pulse rate, the measurement values responsive to light from the second control protocol light source, detected by the detector after attenuation by the body tissue of the patient using the patient monitor,</p>	<p>The Apple Watch Series 3 and later devices, when operating according to the second control protocol, calculate the measurement values of the pulse rate, the measurement values responsive to light from the second control protocol light source, detected by the detector after attenuation by the body tissue of the patient using the patient monitor:</p> <p>The optical heart sensor in Apple Watch uses what is known as photoplethysmography. This technology, while difficult to pronounce, is based on a very simple fact: Blood is red because it reflects red light and absorbs green light. Apple Watch uses green LED lights paired with light-sensitive photodiodes to detect the amount of blood flowing through your wrist at any given moment. When your heart beats, the blood flow in your wrist — and the green light absorption — is greater. Between beats, it's less. By flashing its LED lights hundreds of times per second, Apple Watch can calculate the number of times the heart beats each minute — your heart rate. The optical heart sensor supports a range of 30–210 beats per minute. In addition, the optical heart sensor is designed to compensate for low signal levels by increasing both LED brightness and sampling rate.</p> <p>The optical heart sensor can also use infrared light. This mode is what Apple Watch uses when it measures your heart rate in the background, and for heart rate notifications. Apple Watch uses green LED lights to measure your heart rate during workouts and Breathe sessions, and to calculate walking average and Heart Rate Variability (HRV).</p> <p><a href="https://support.apple.com/en-us/HT204666">https://support.apple.com/en-us/HT204666</a>.</p>

U.S. Patent No. 10,433,776 Claim 1	Description of Accused Products
	<p>The Apple Watches Series 3 and later devices transmit recorded data to the Health App on iOS devices. Upon information and belief, the pulse rate determination, the types of LEDs used to determine pulse rate, and the operation of the LEDs varies with pulse rate activity and heart rate context (e.g., background, sedentary, streaming, etc.).</p> <p>See also <a href="https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate">https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate</a>.</p>
<p>wherein said operating of the patient monitor according to the first control protocol operates the first control protocol light source according to a first duty cycle and said operating of the patient monitor according to the second control protocol operates the second control protocol light source according to a second duty cycle, wherein power consumption of the first control protocol light source according to the first duty cycle is different than power consumption of the second control protocol light source according to the second duty cycle.</p>	<p>The Apple Watch Series 3 and later devices operates the first control protocol light source according to a first duty cycle and operates the second control protocol light source according to a second duty cycle, wherein power consumption of the first control protocol light source according to the first duty cycle is different than power consumption of the second control protocol light source according to the second duty cycle.</p> <p>The Apple Watches Series 3 and later devices transmit recorded data to the Health App on iOS devices. Upon information and belief, the pulse rate determination, the types of LEDs used to determine pulse rate, and the operation of the LEDs varies with pulse rate activity and heart rate context (e.g., background, sedentary, streaming, etc.), as described in International Application Publication WO 2018/226305 (the '305 publication), for example, at paragraphs [0055]-[0061].</p> <p>See also <a href="https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate">https://developer.apple.com/documentation/healthkit/hkquantitytypeidentifier/1615138-heartrate</a>.</p>



# Exhibit 2

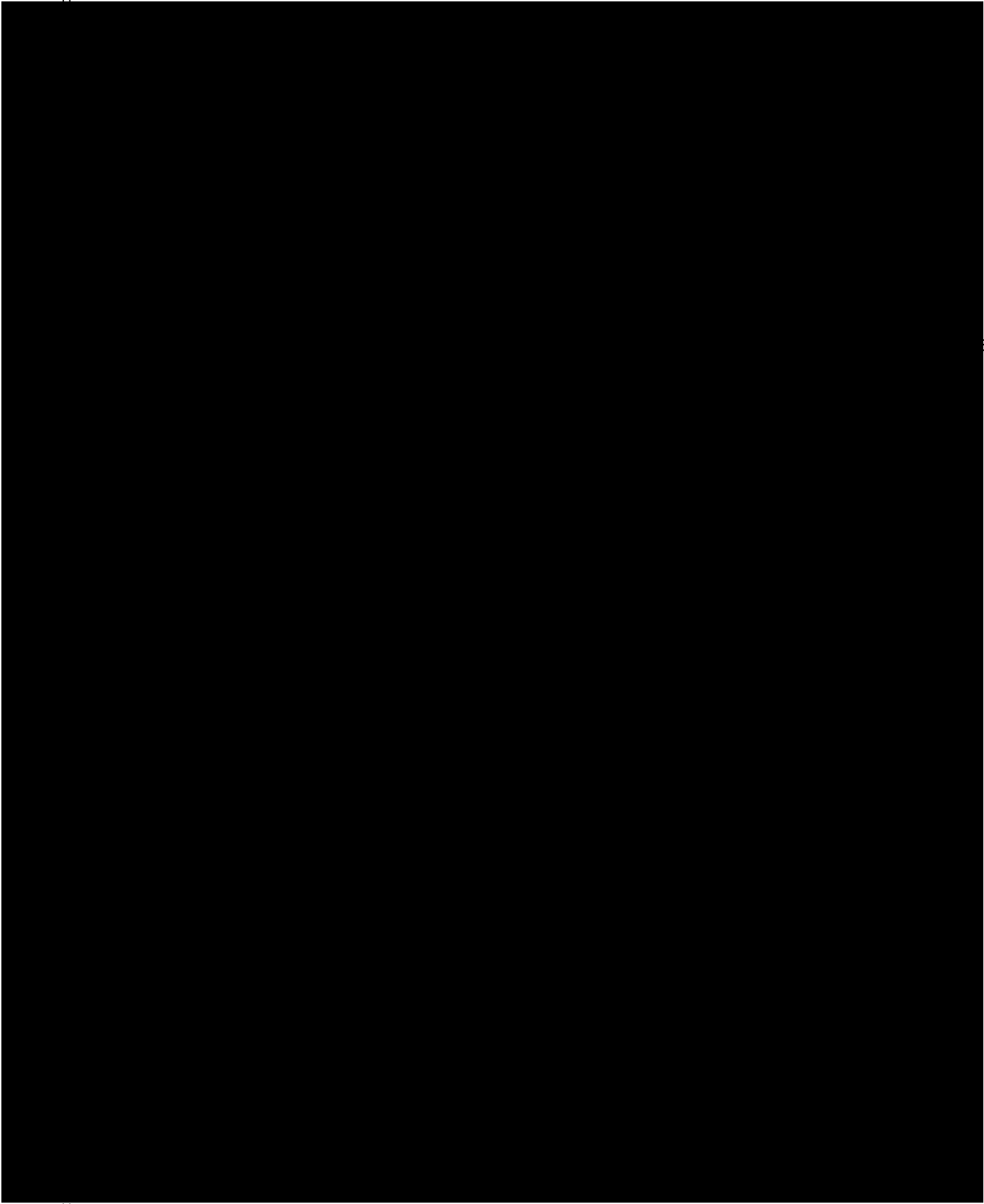


















**PROOF OF SERVICE**

**Masimo Corporation, et al. vs. Apple, Inc.  
A279845**

I, the undersigned, an employee of Judicate West, located at 1851 E. First Street, Suite 1600, Santa Ana, CA 92705 declare under penalty of perjury that I am over the age of eighteen (18) and not a party to this matter or proceeding.

On March 17, 2022, I served the foregoing documents, described as:

**ORDER NO. 6 OF SPECIAL MASTER ON TWO DISCOVERY MOTIONS**

to the following parties:

**SEE ATTACHED MAILING LIST**

- (X) **BY E-MAIL** I caused the above-referenced document to be transmitted via electronic mail (e-mail) to the parties as listed on this Proof of Service
- ( ) **BY ELECTRONIC FILING** I caused such document to be sent via electronic service by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at [www.onelegal.com](http://www.onelegal.com).
- ( ) **BY FACSIMILE** I caused the above-referenced document to be transmitted via facsimile to the parties as listed on this Proof of Service. The document was transmitted by facsimile transmission and the transmission was reported as complete and without error.
- ( ) **BY PERSONAL SERVICE** I personally delivered the documents to the persons at the address (es): by leaving the documents at the person (s) office, in an envelope or package clearly labeled to identify the person(s) being served, with a receptionist or an individual in charge of the office.
- ( ) **BY UNITED STATES PARCEL SERVICE** I am readily familiar with the business' practice for collection and processing of correspondence and mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business
- ( ) **STATE** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ( ) **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **March 17, 2022**, at Santa Ana, California

Heidi Adams  
Judicate West





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as of Thursday, March 17, 2022

**JW Case #: A279845**

***Case Caption: Masimo Corporation, et al. vs. Apple, Inc.***

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

MASIMO CORPORATION,  
a Delaware corporation; and  
CERCACOR LABORATORIES, INC.,  
a Delaware corporation

Plaintiffs,

v.

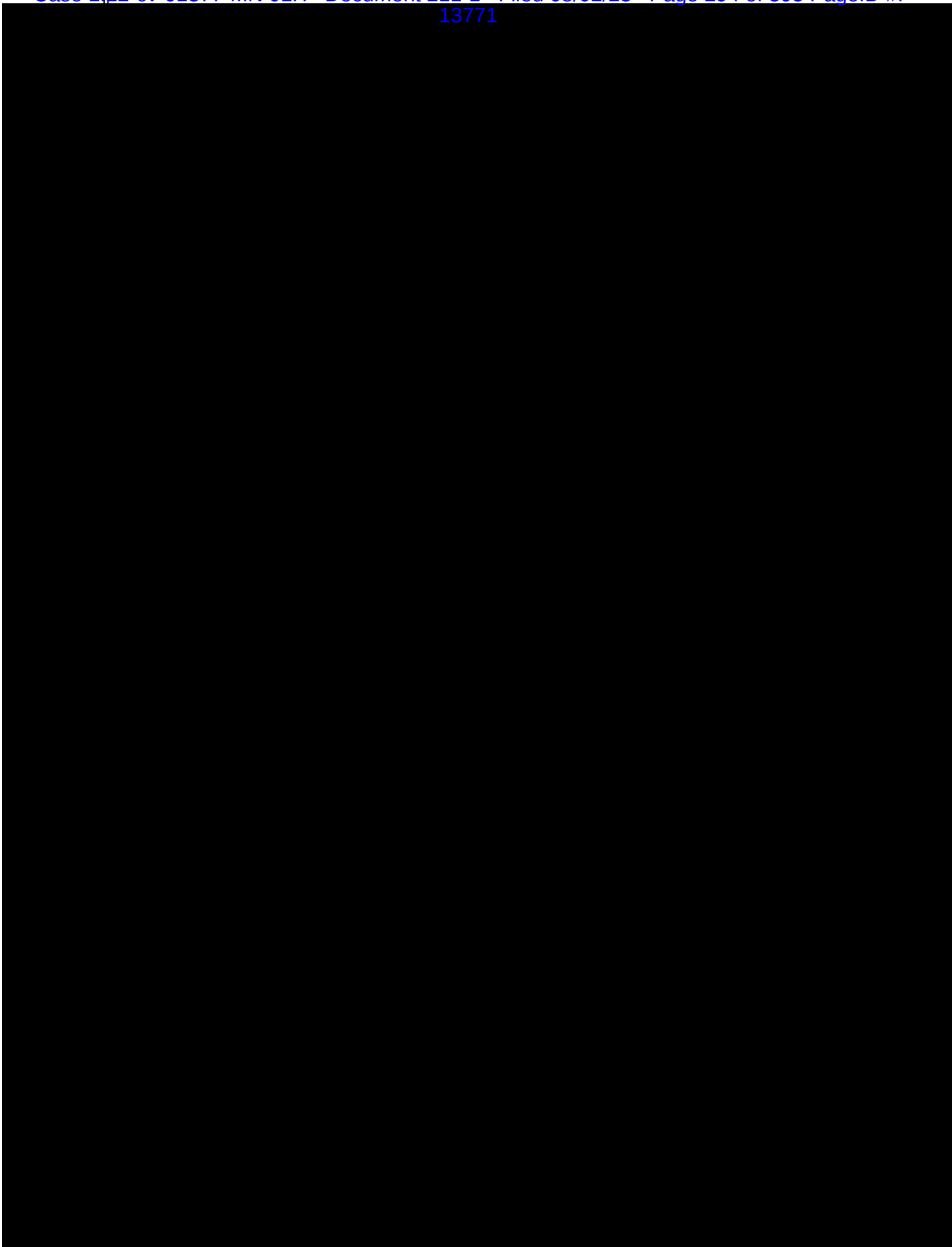
APPLE INC., a California corporation

Defendant.

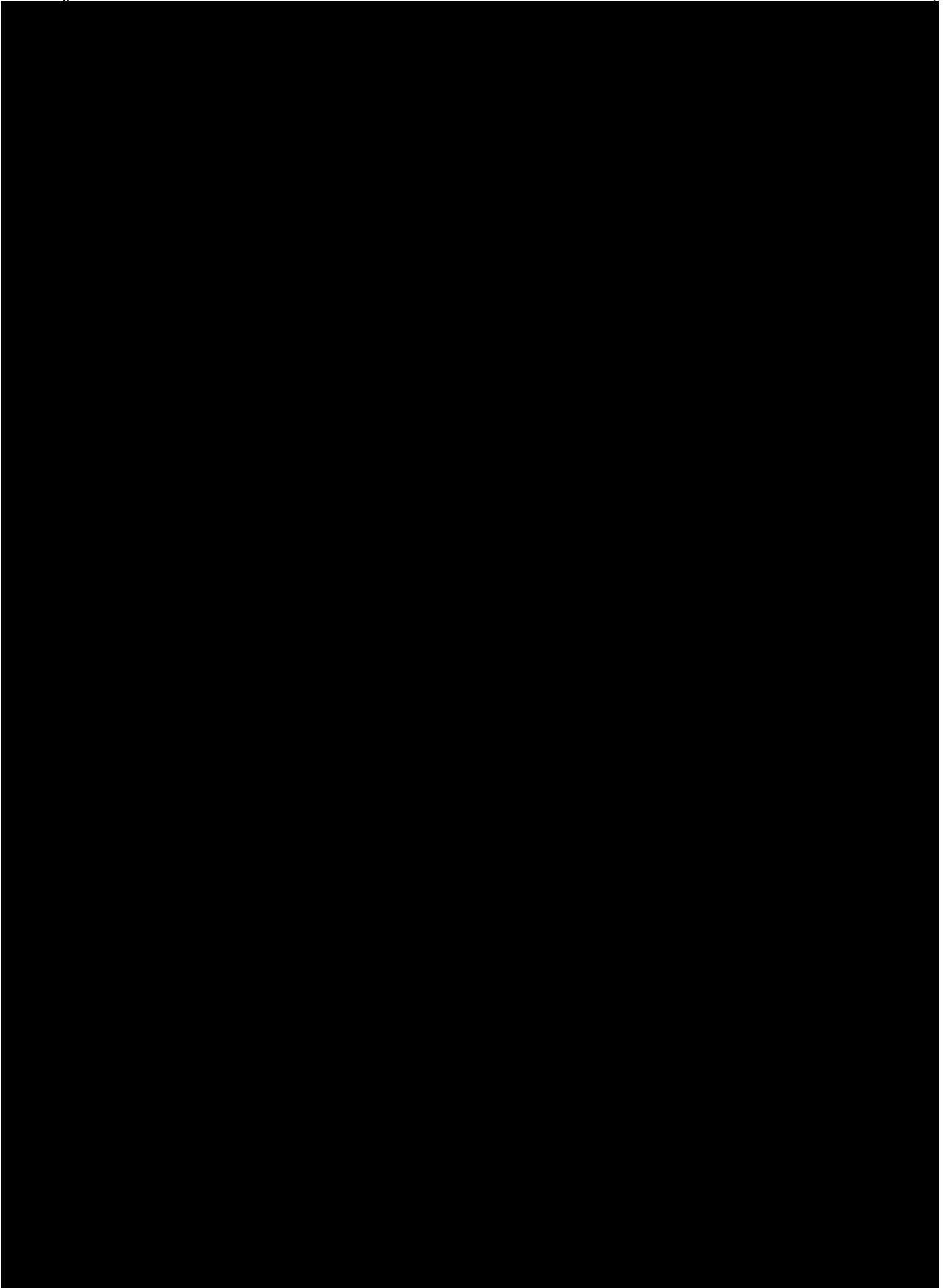
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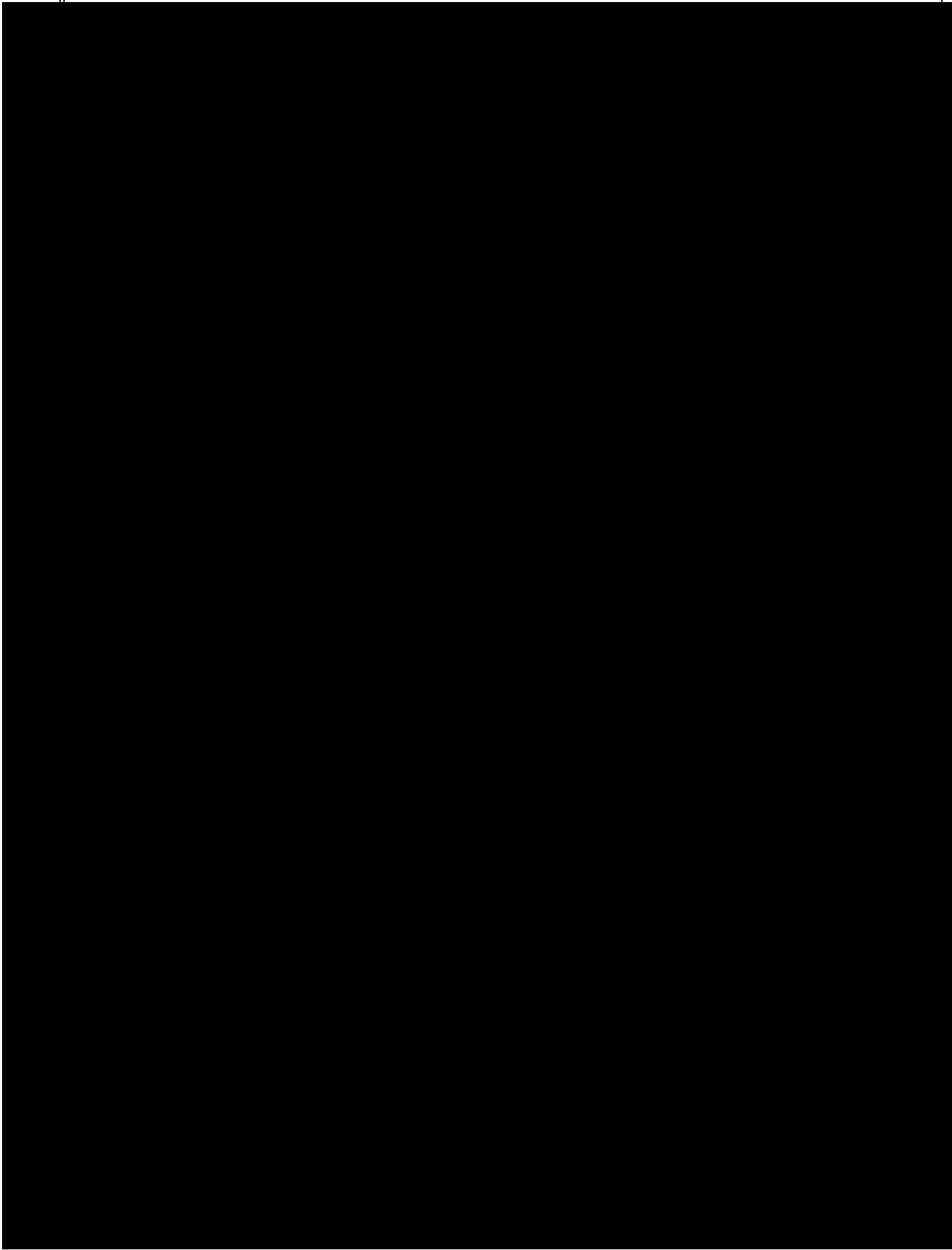
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) Magistrate Judge John D. Early

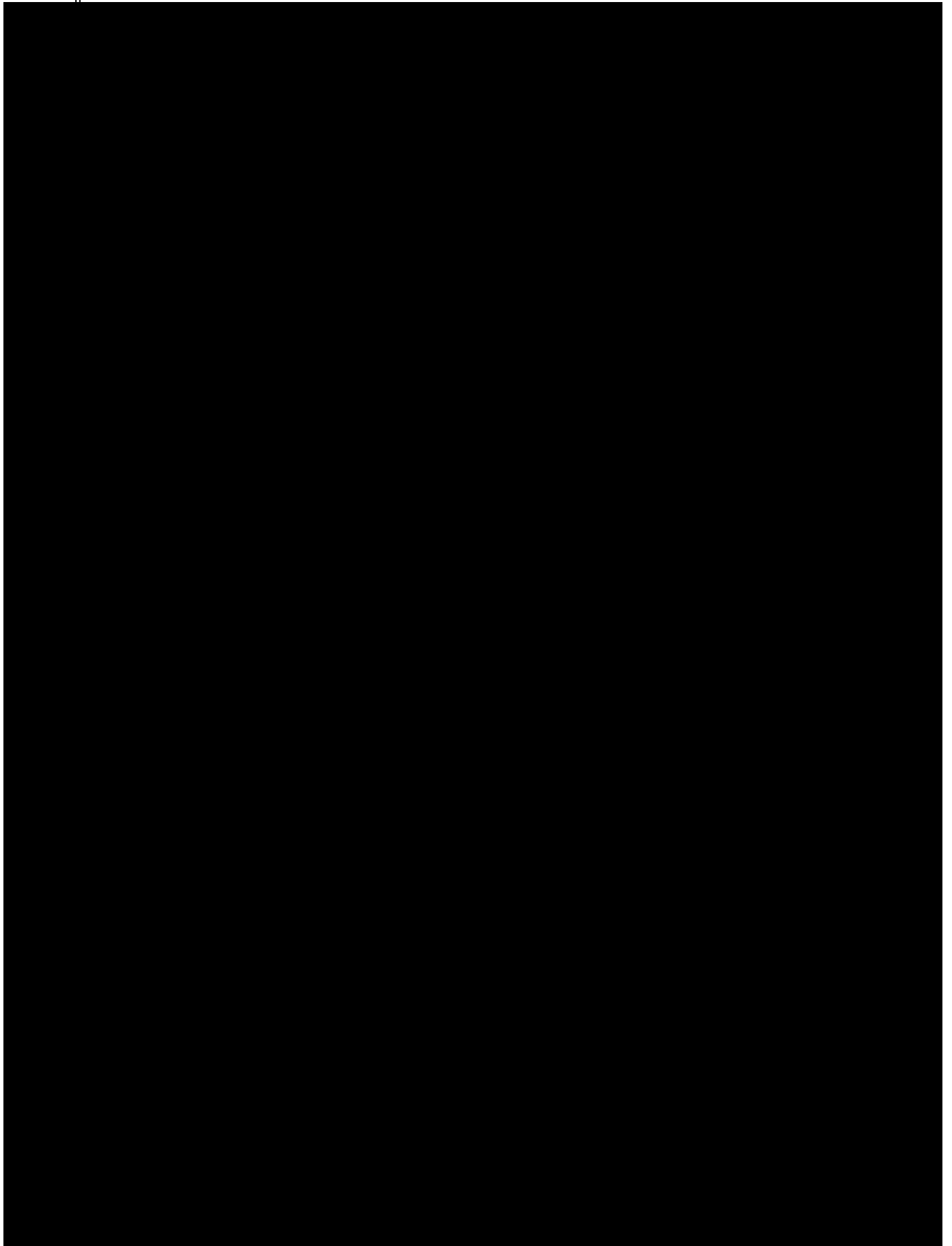
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) **DEFENDANT UNDER FEDERAL**  
) **RULE OF CIVIL PROCEDURE**  
) **30(b)(6)**

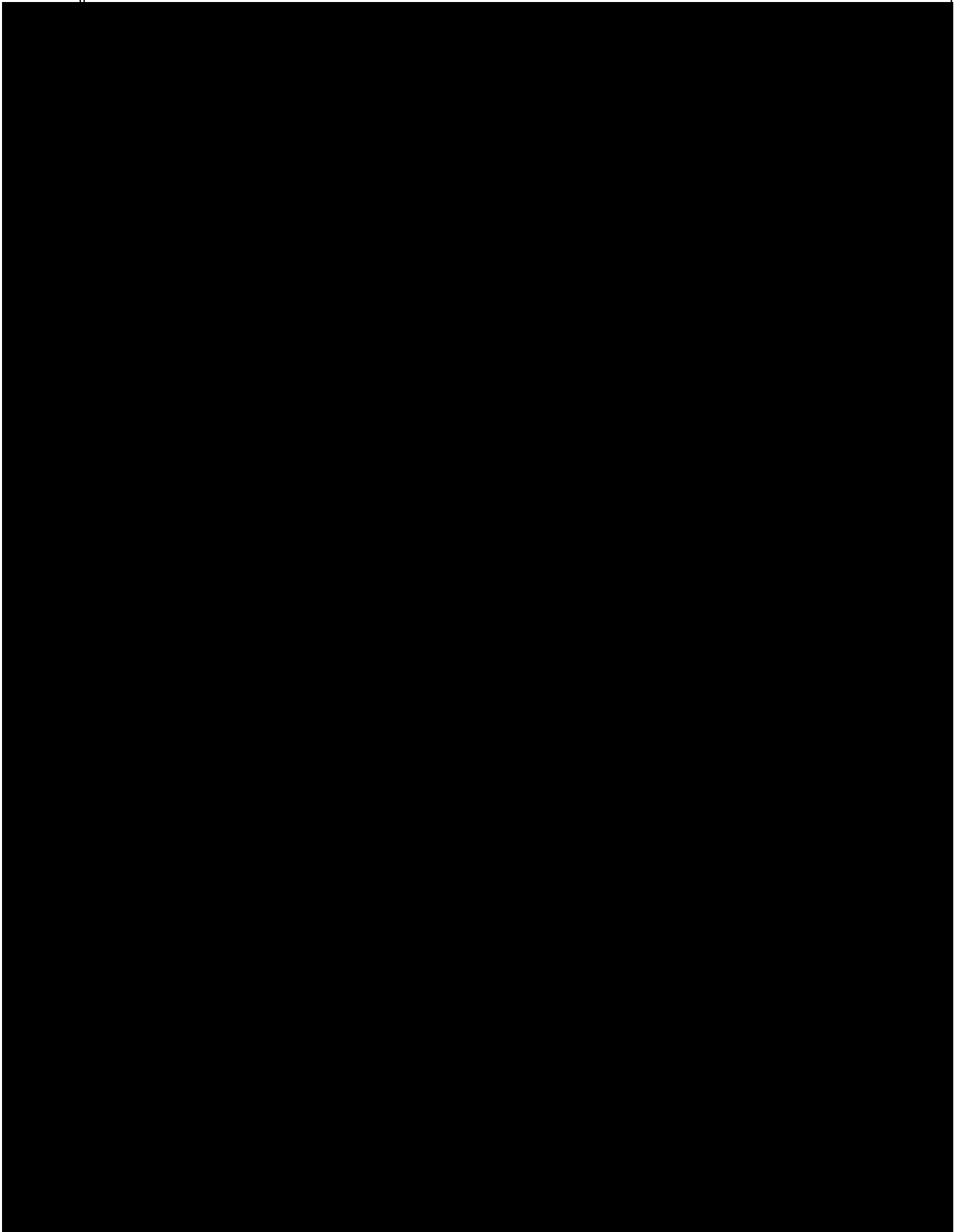


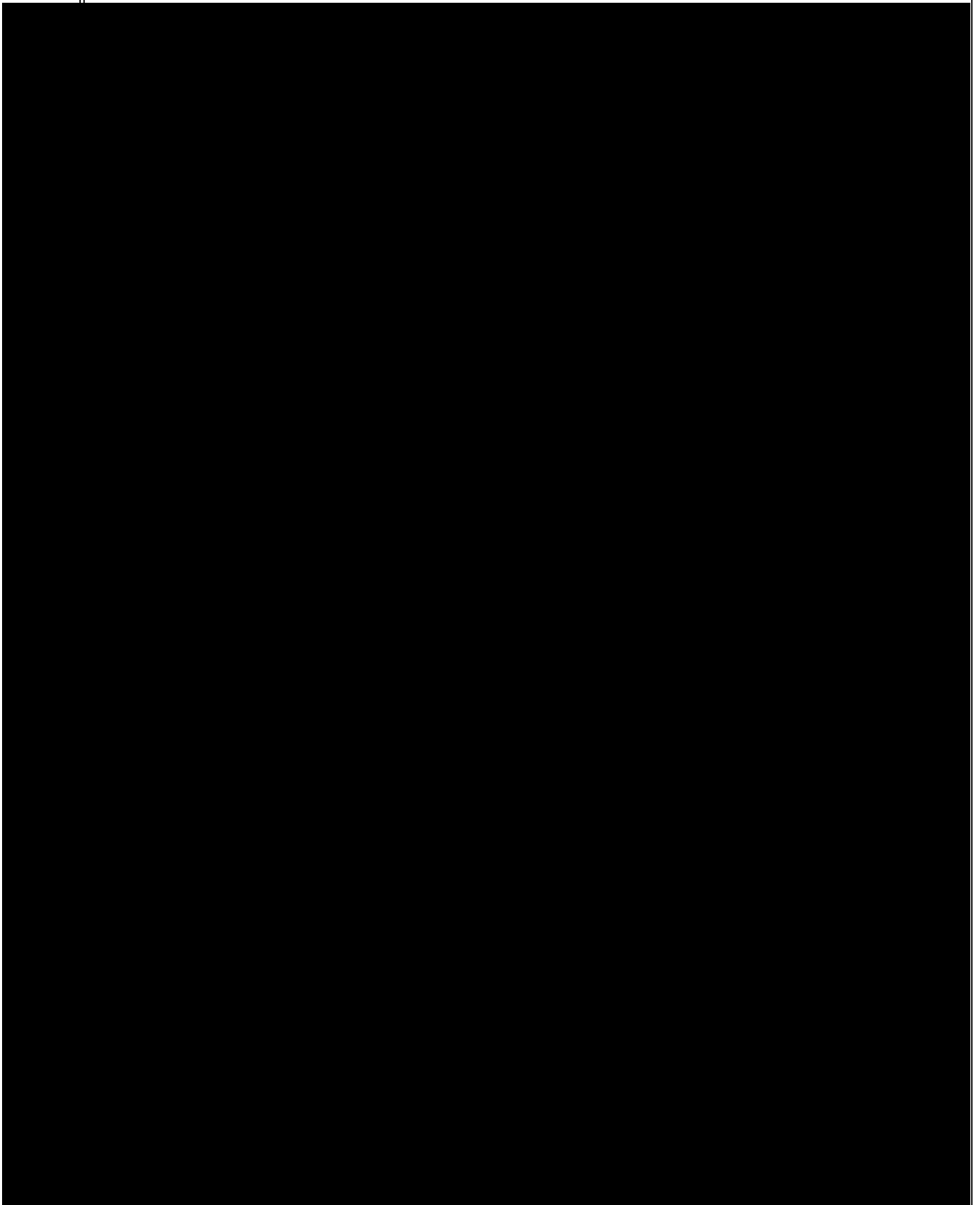


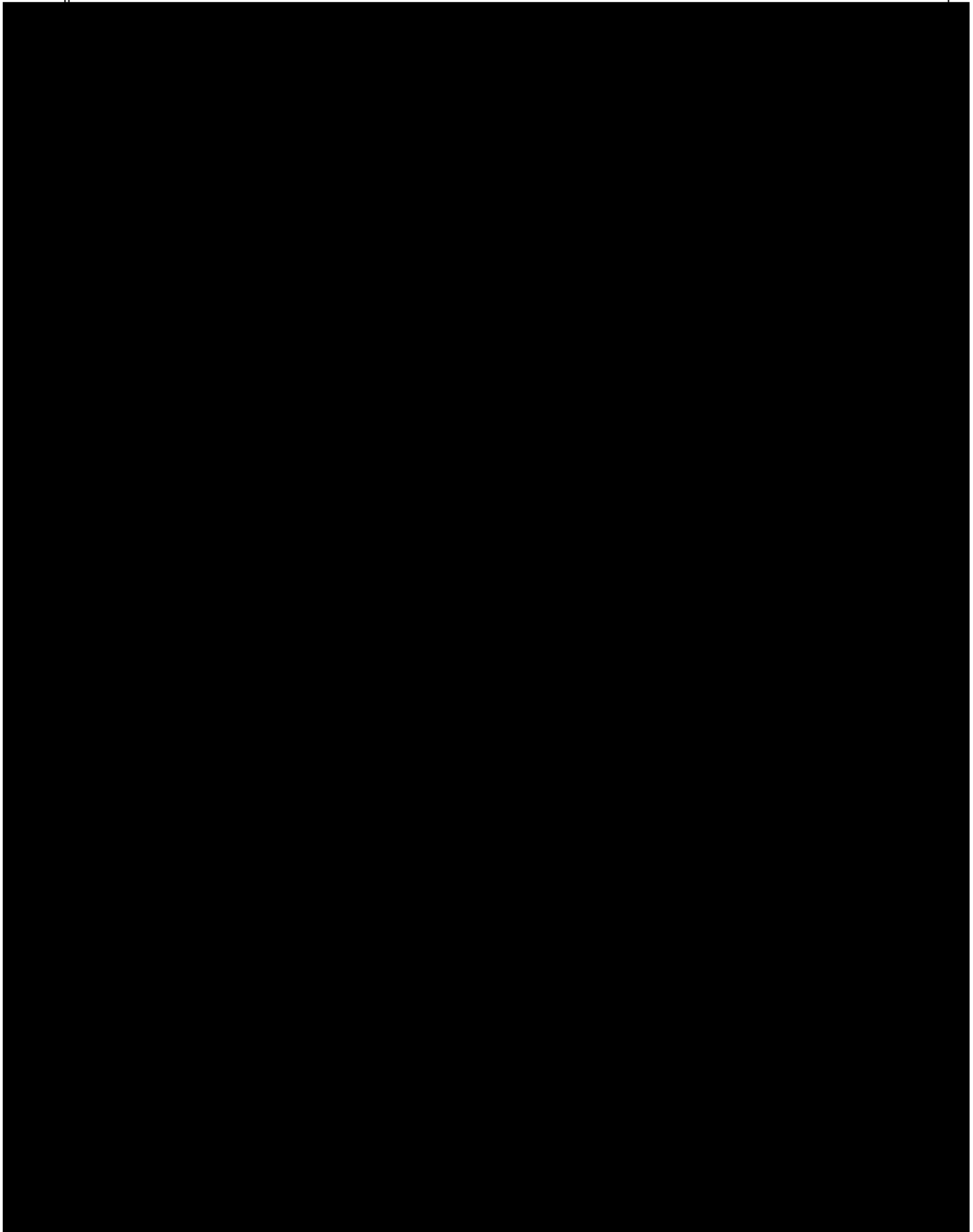




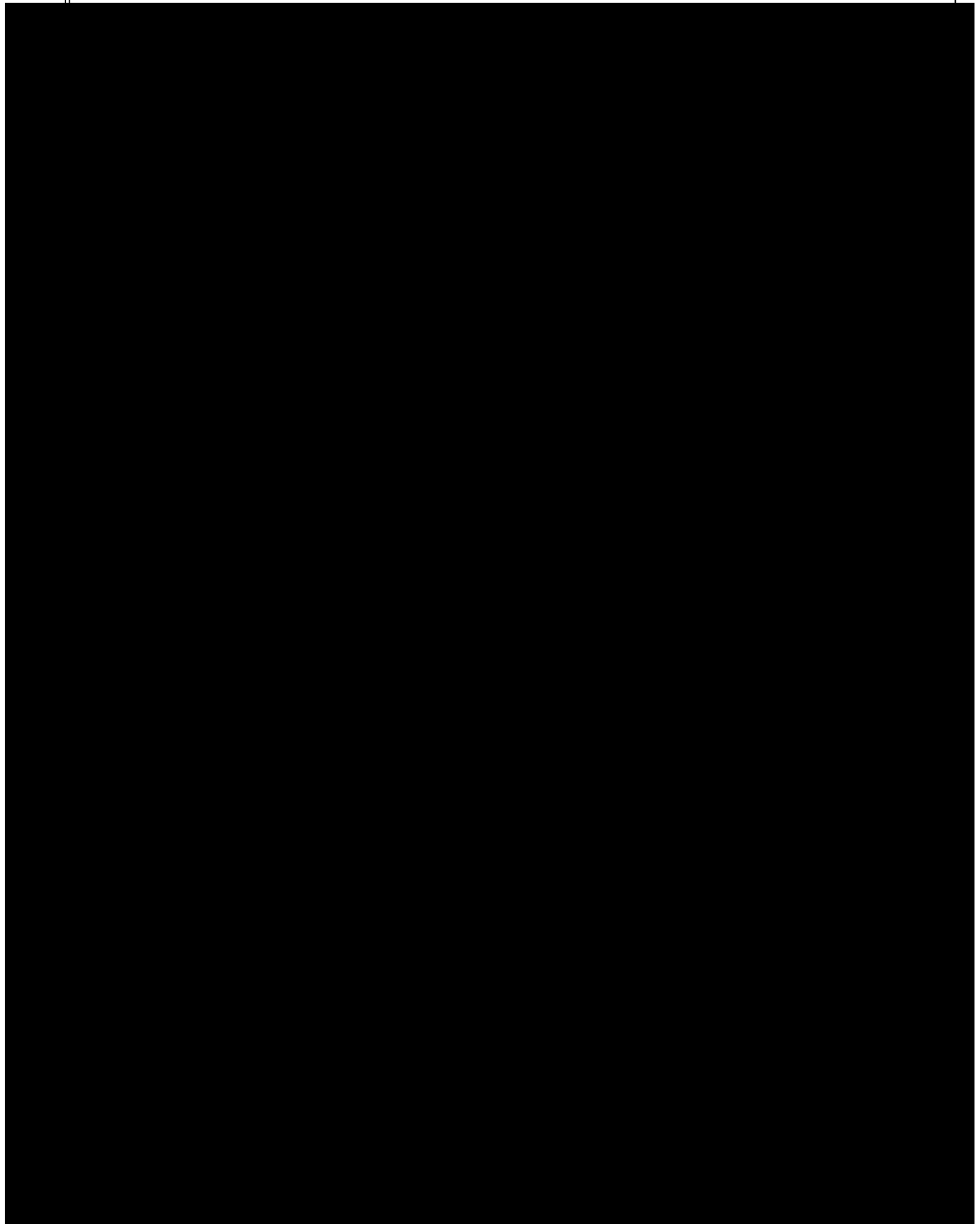


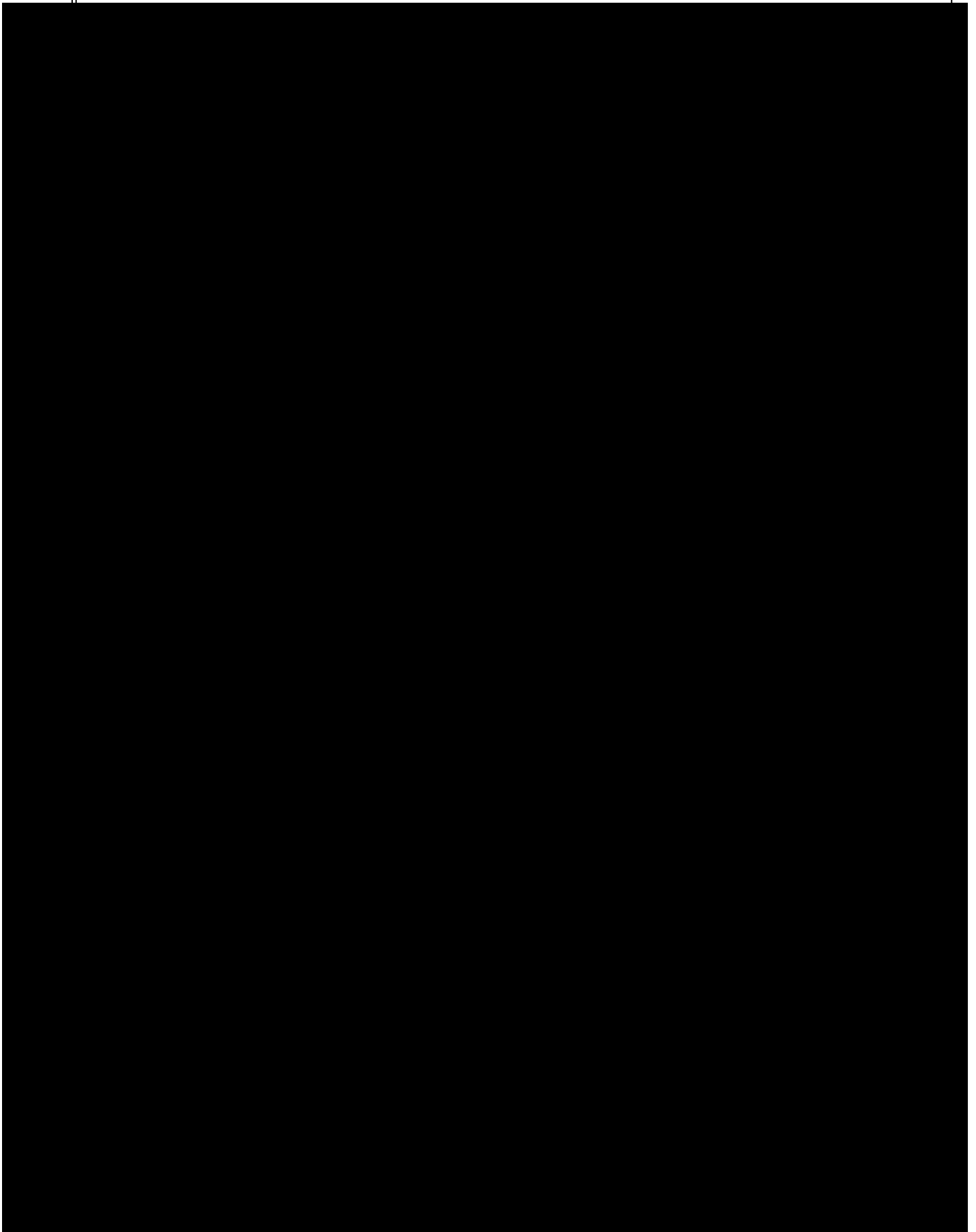


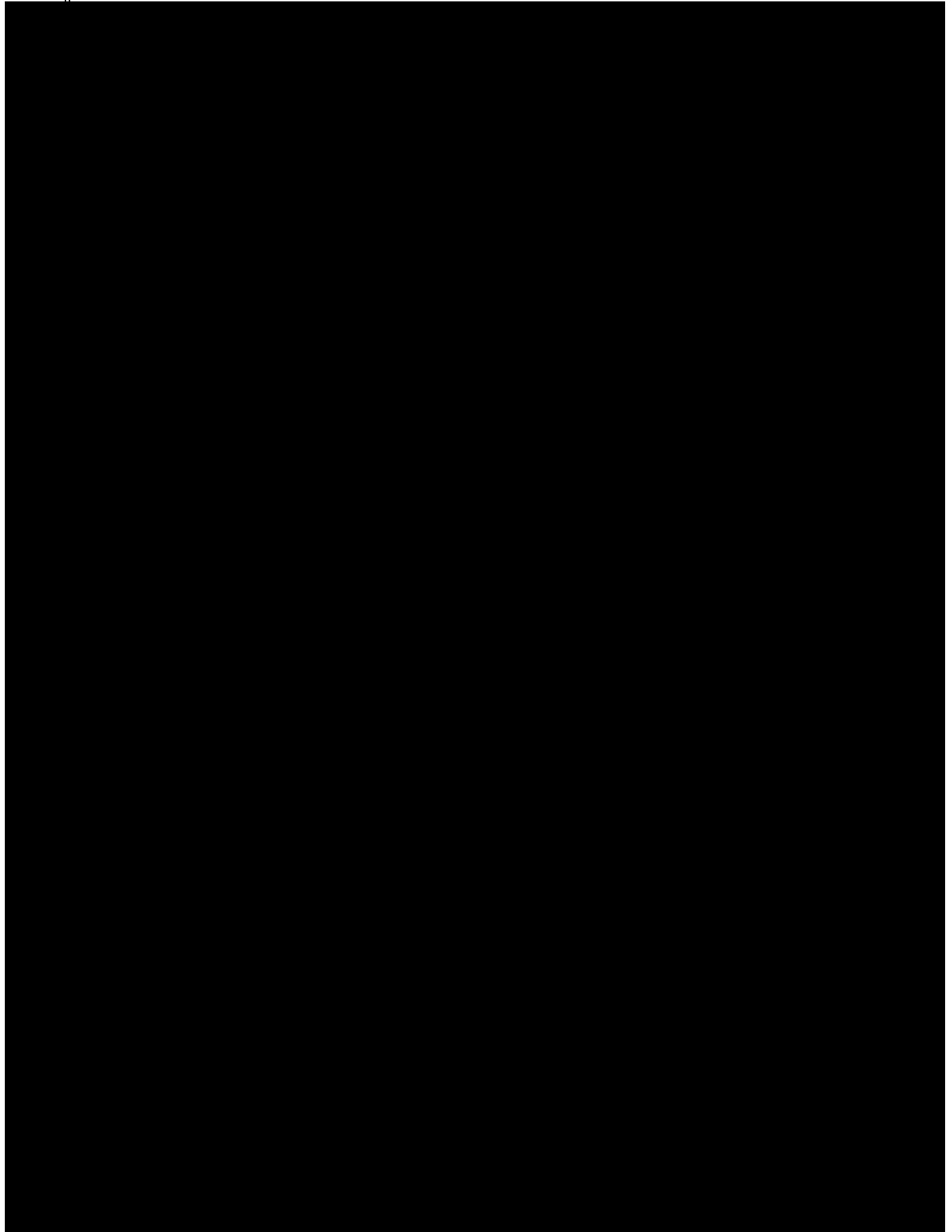


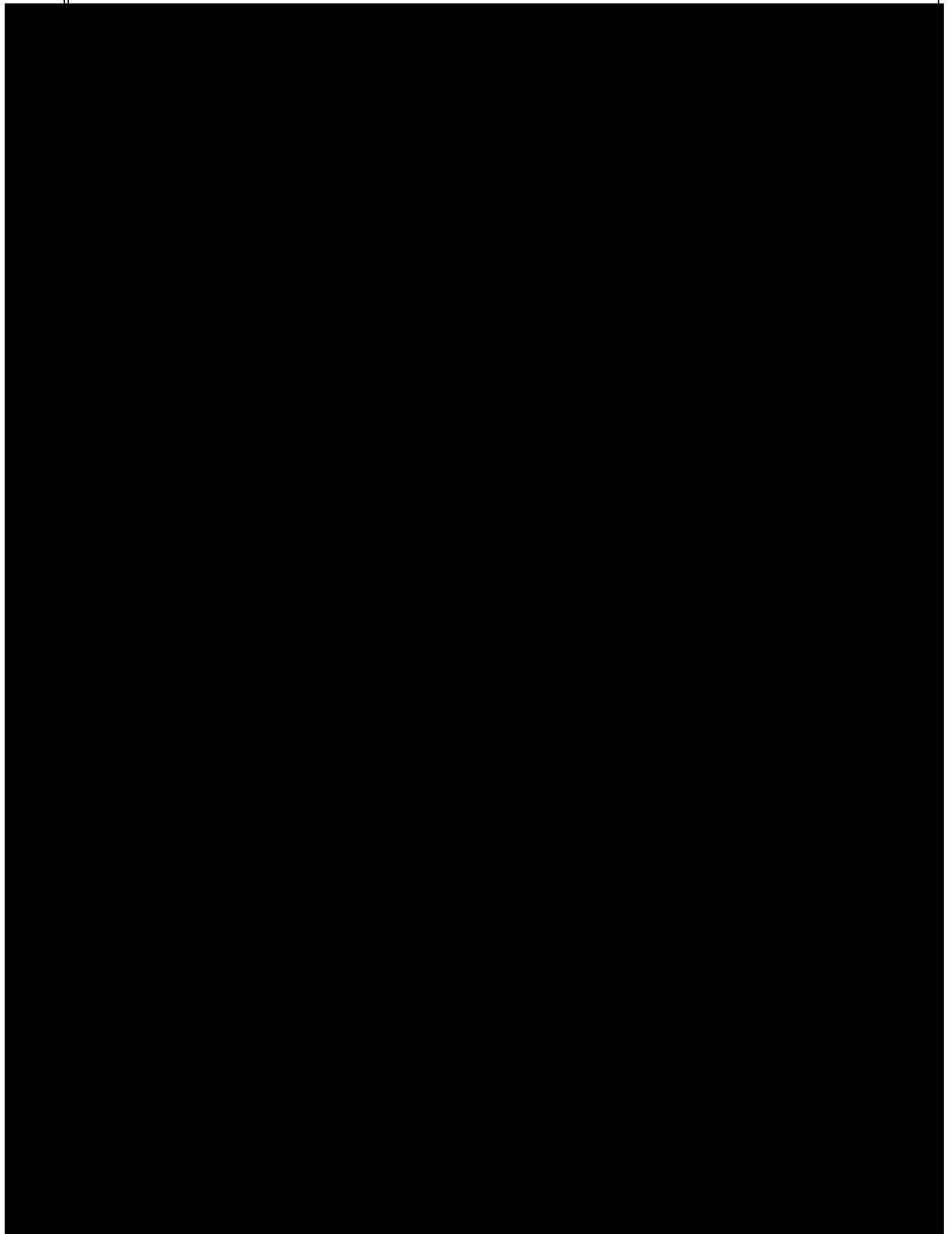


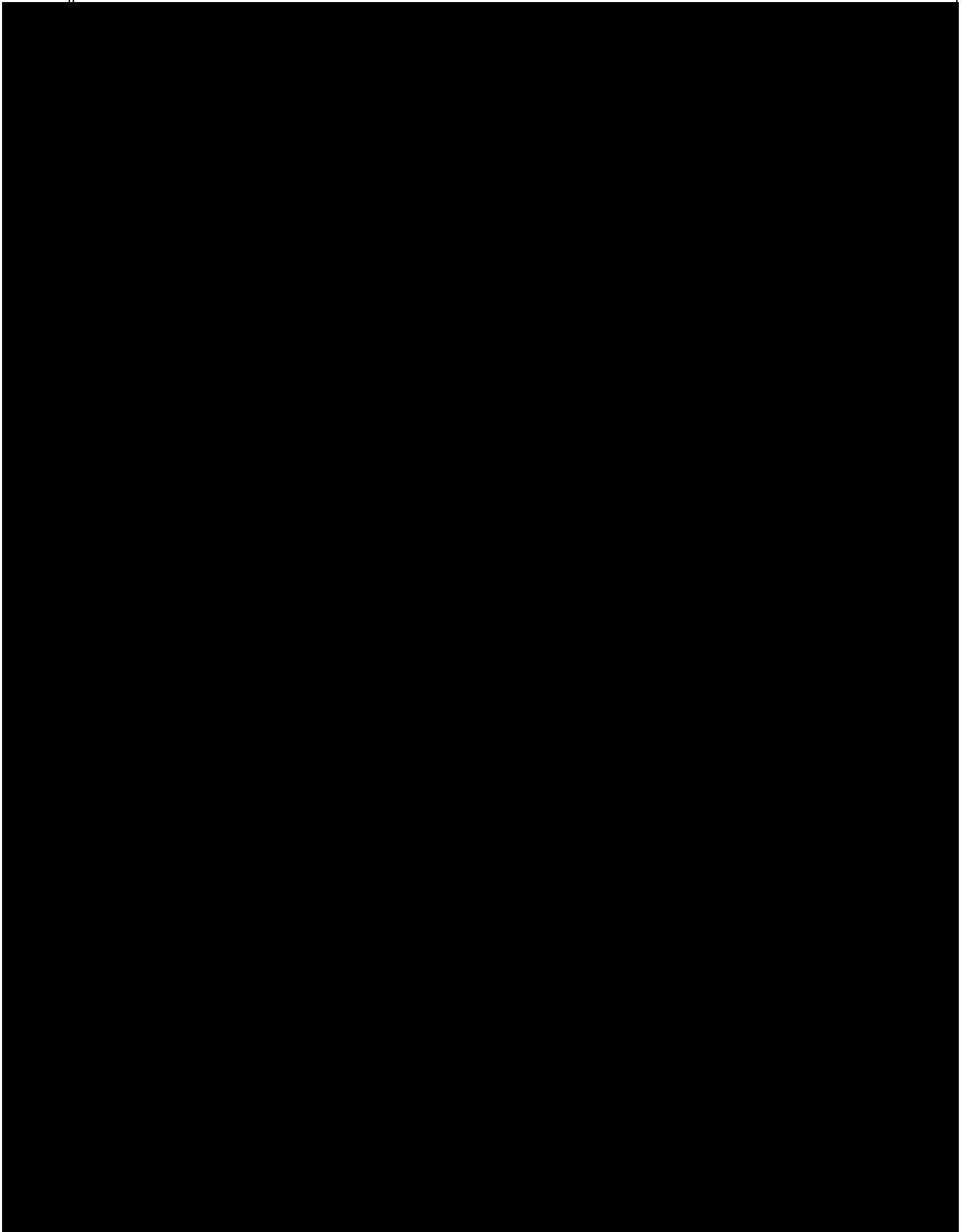


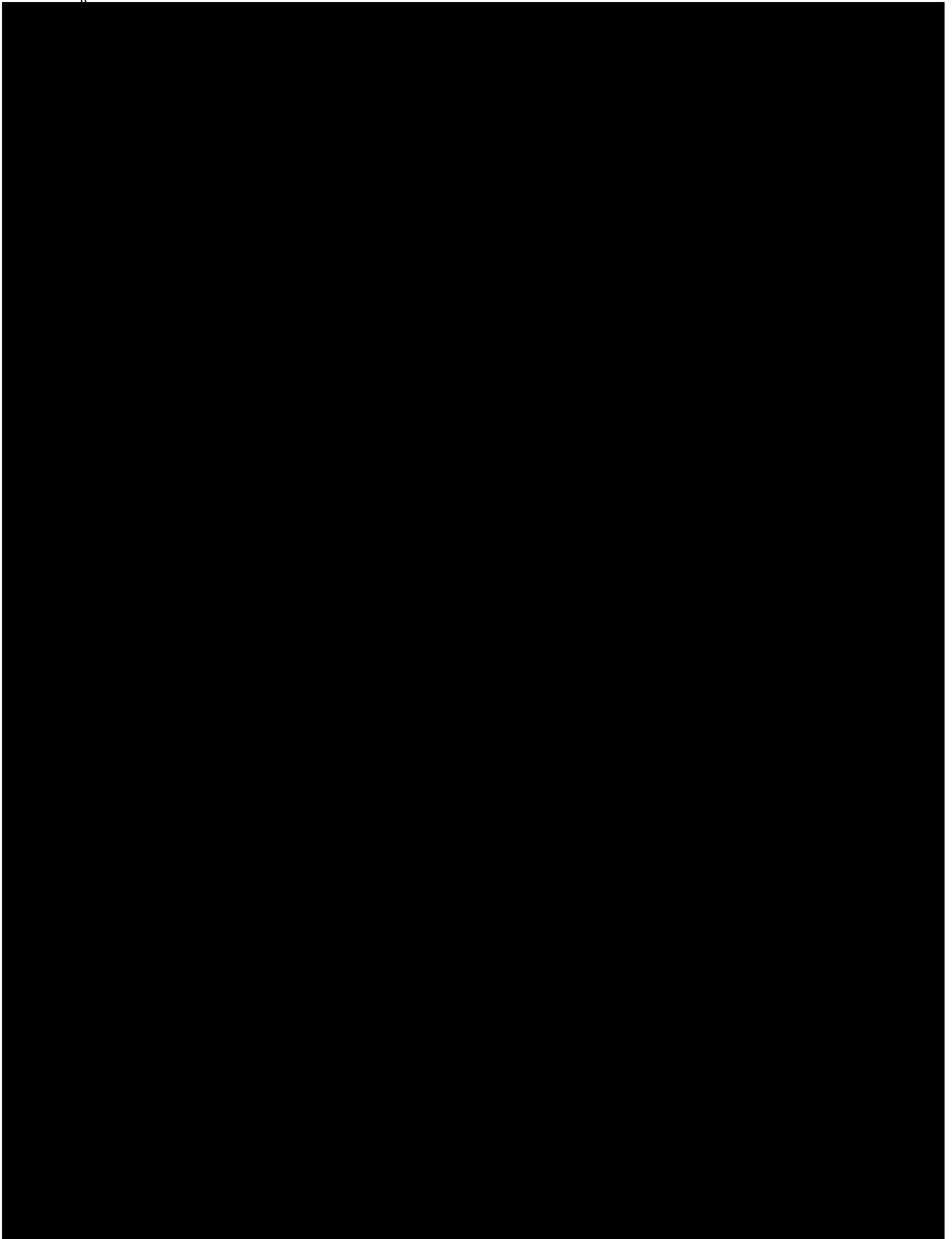


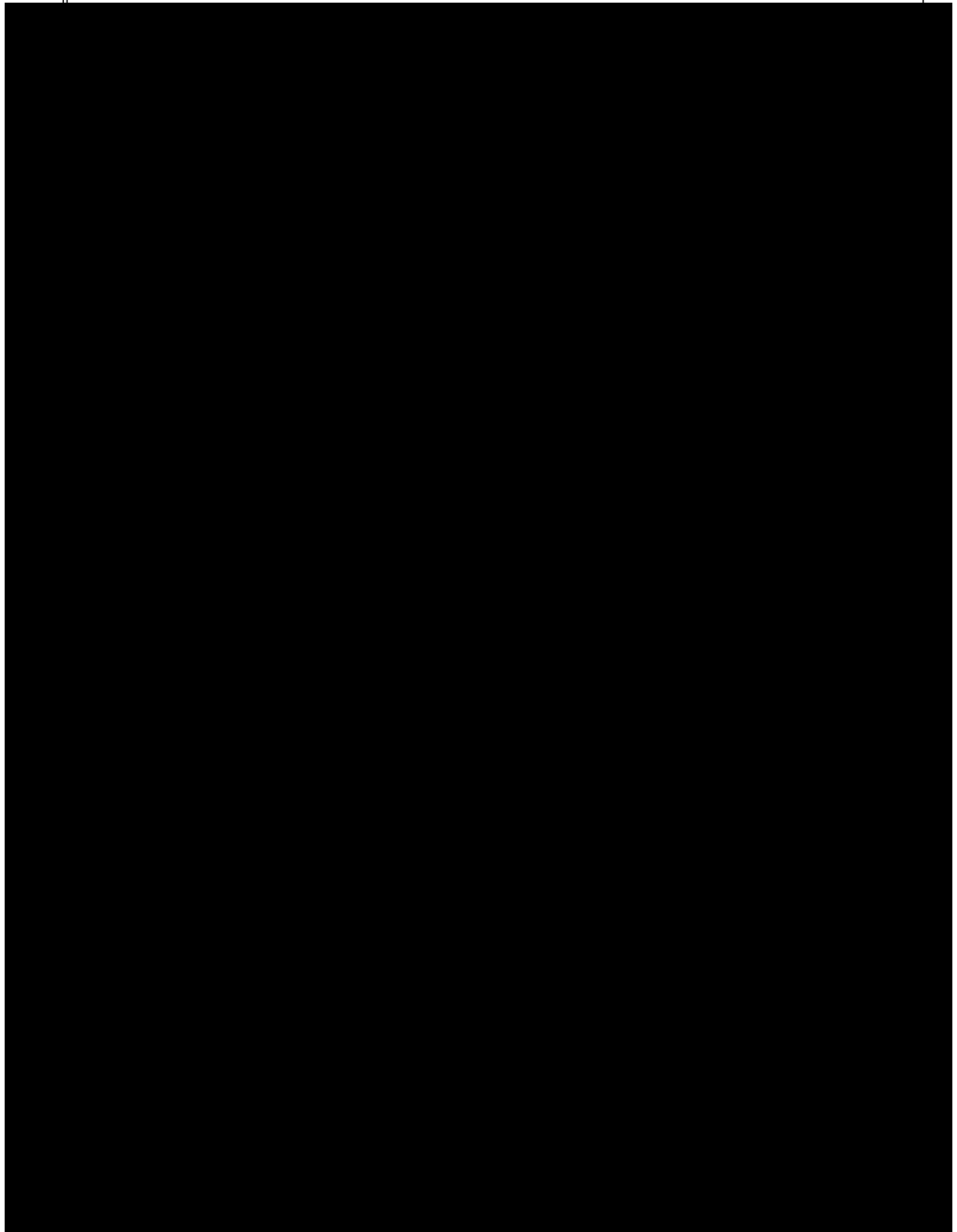




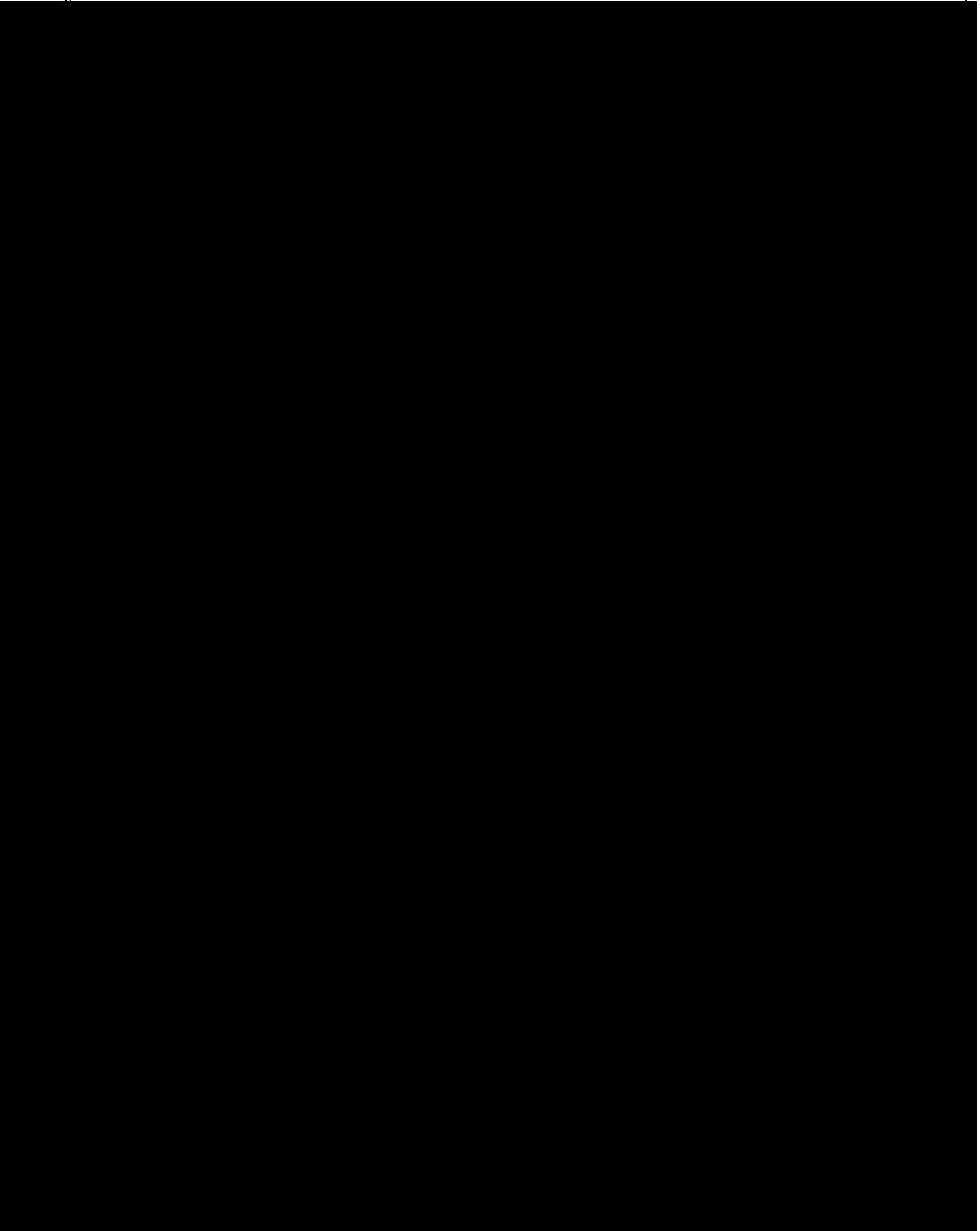


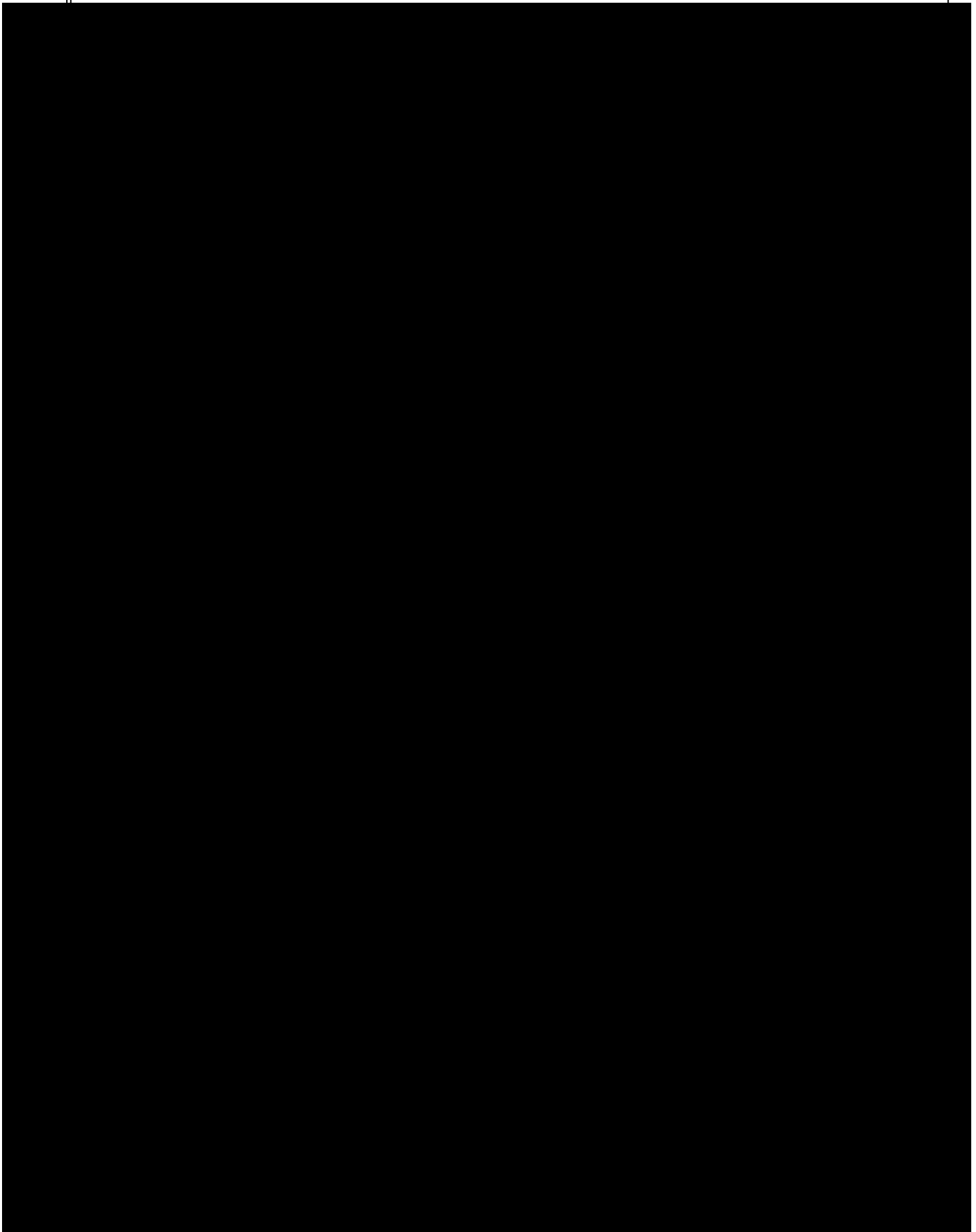


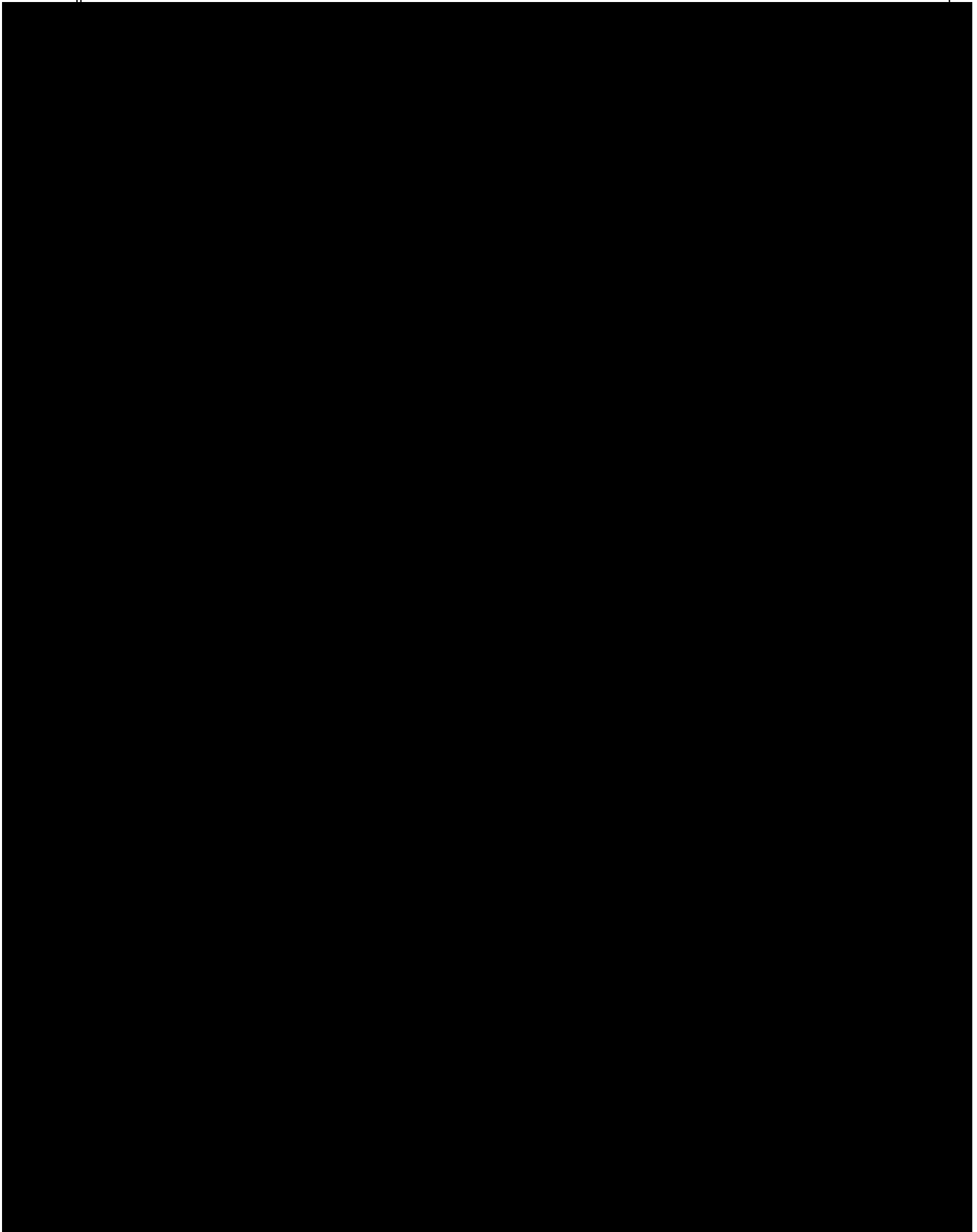


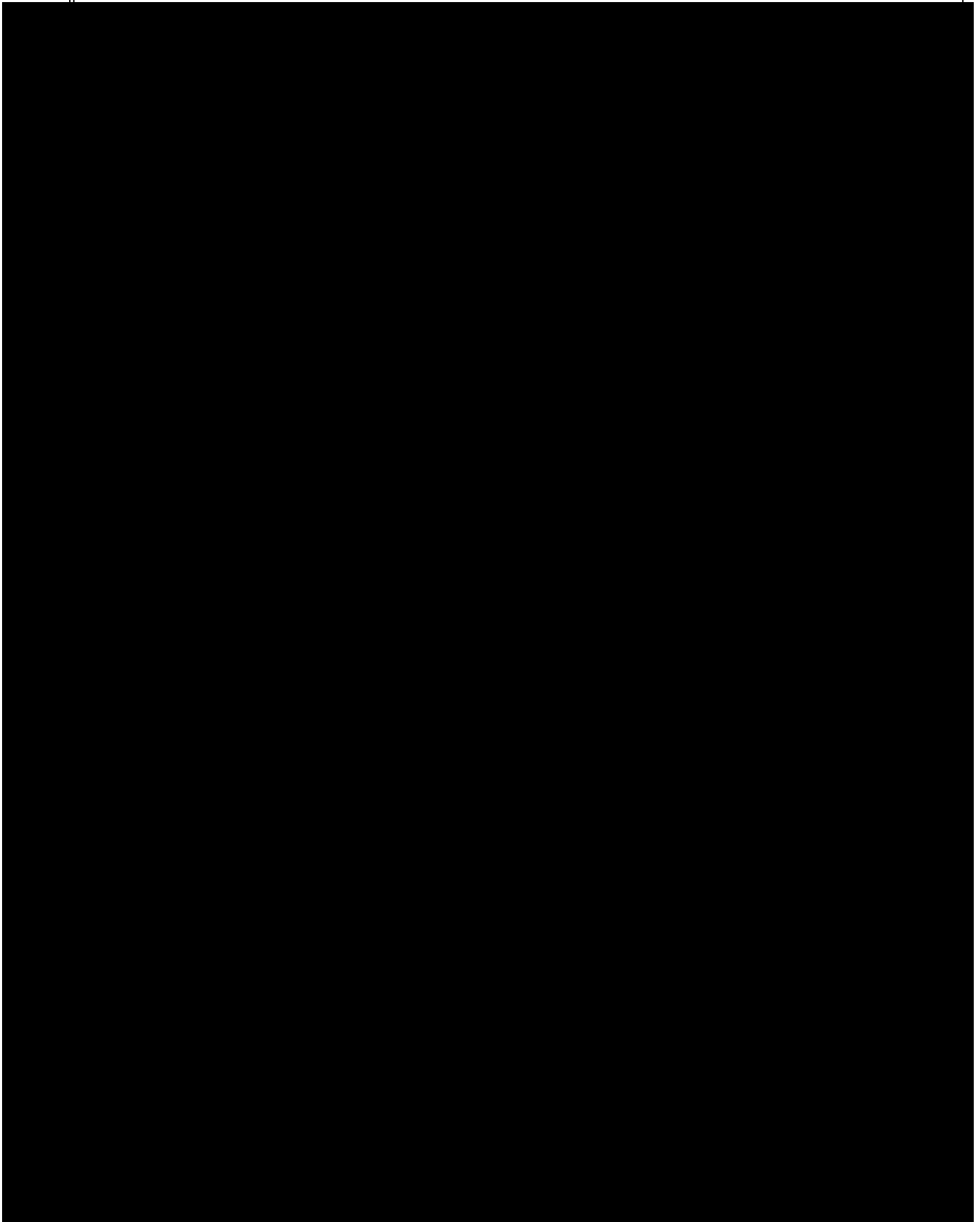


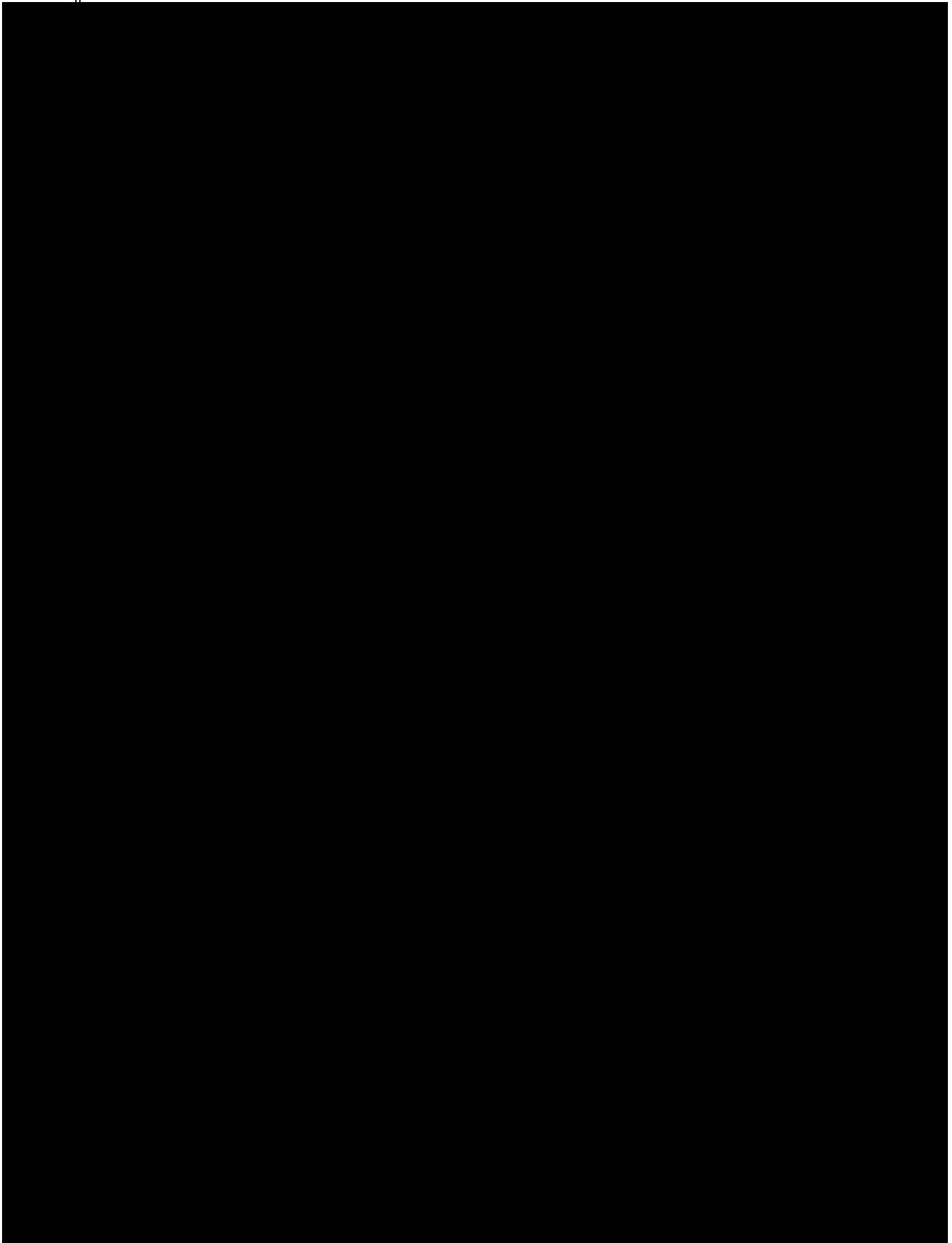


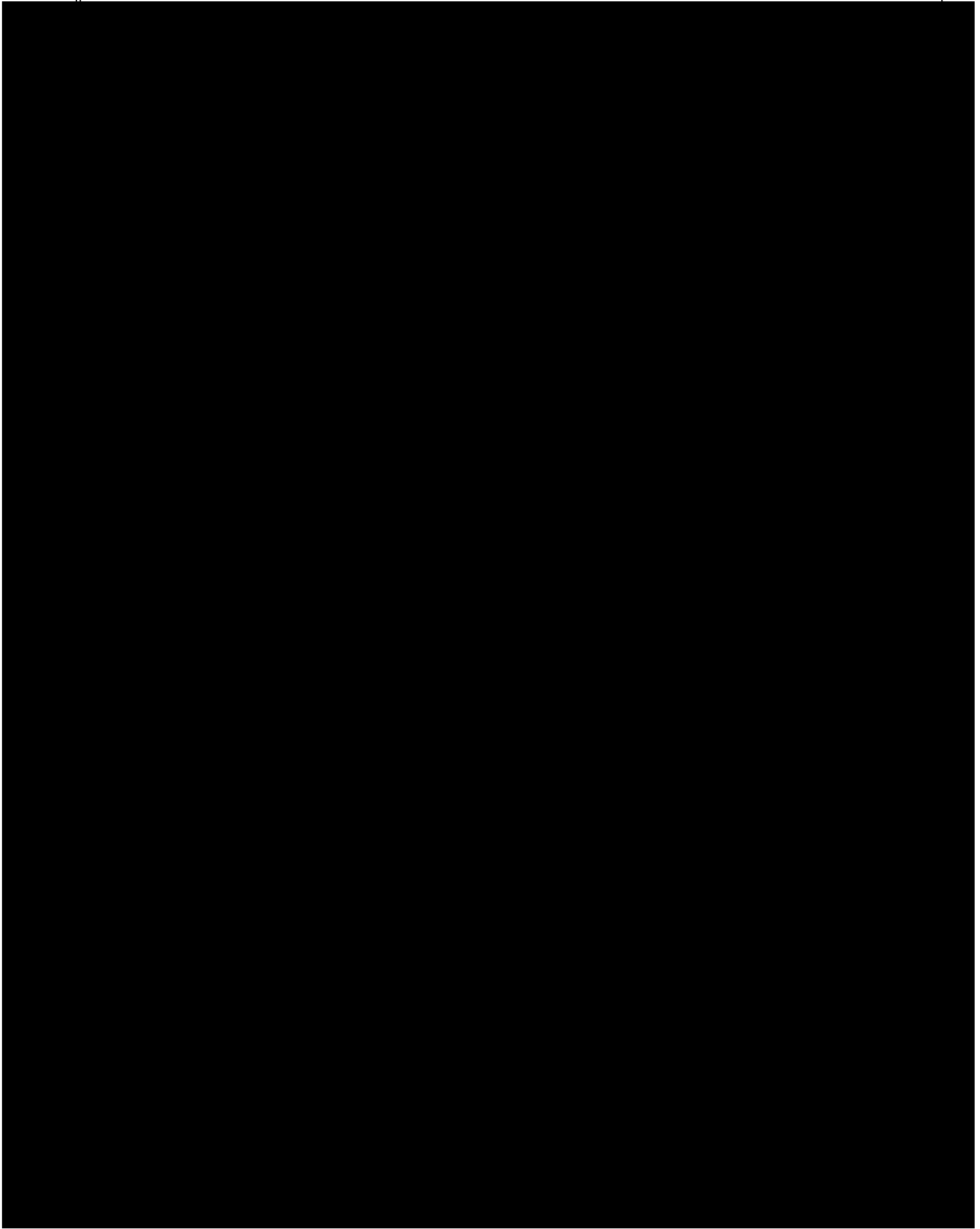


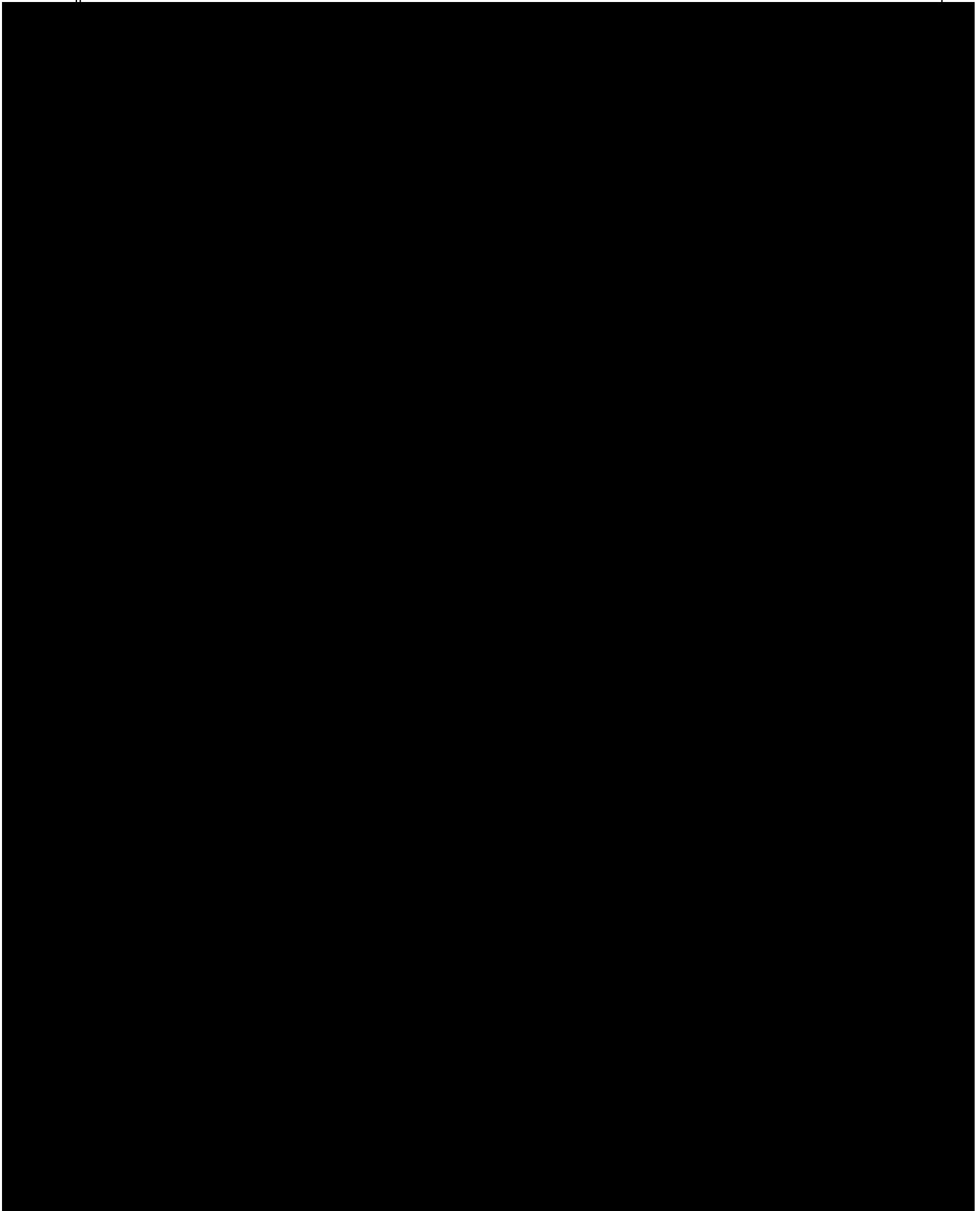




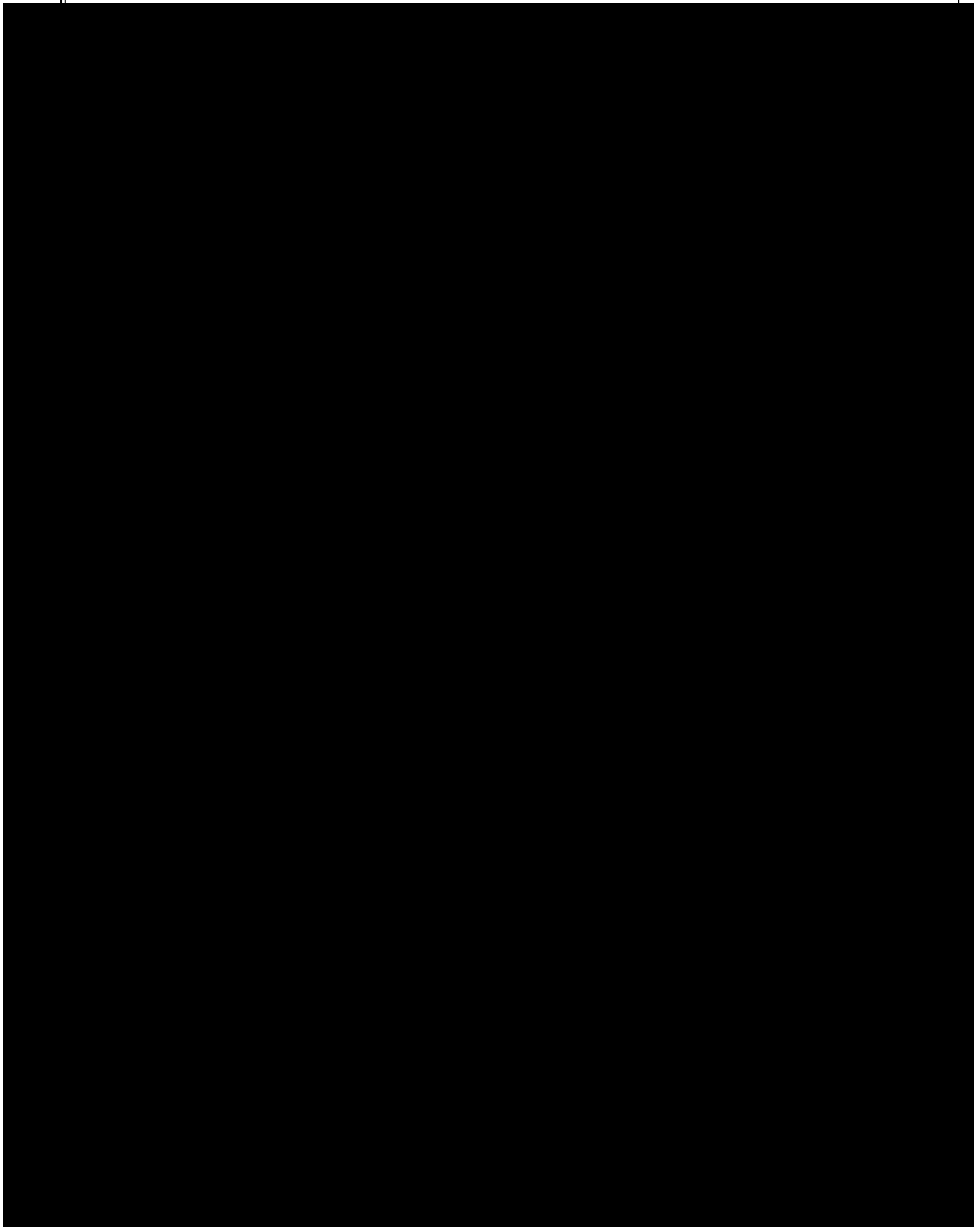


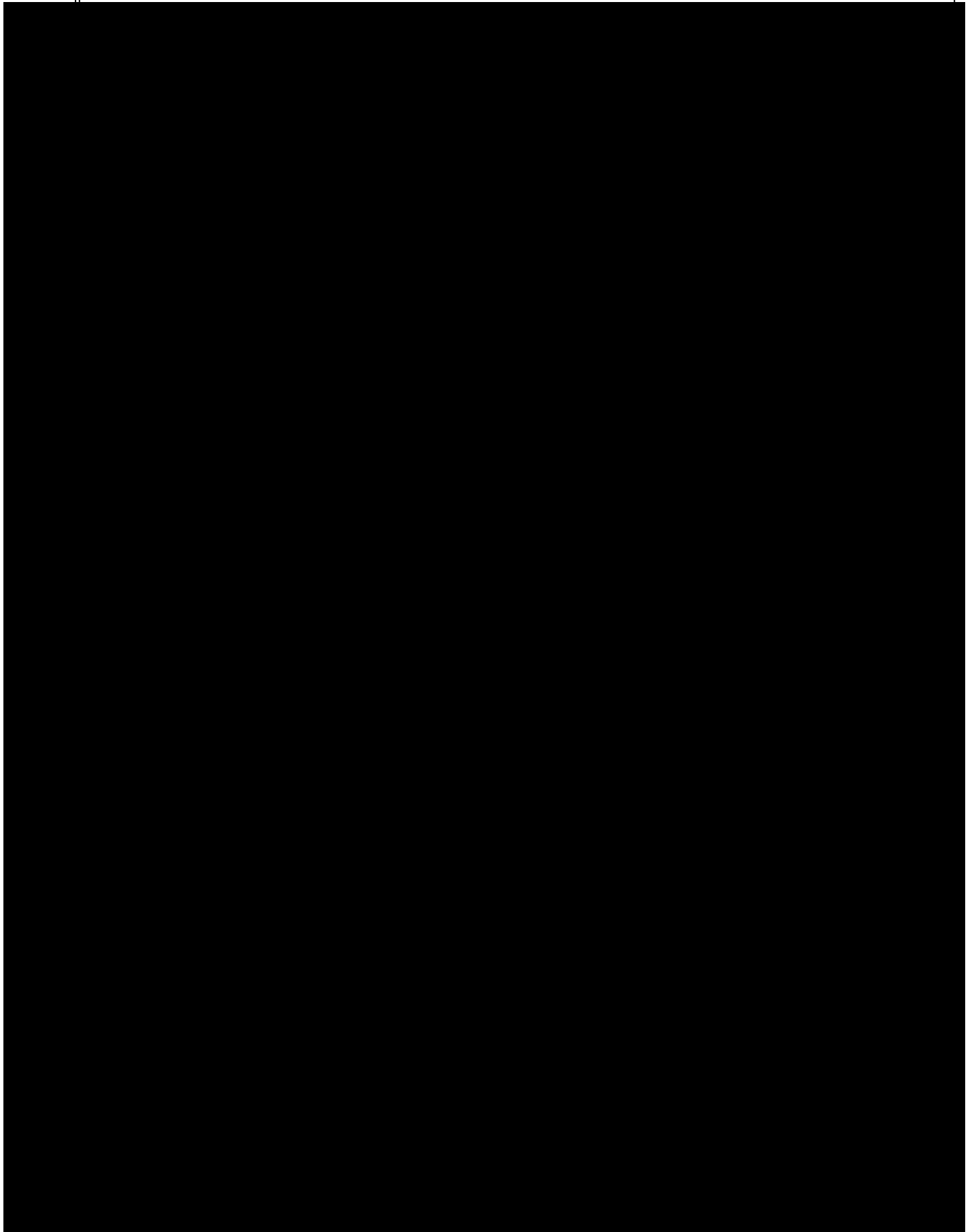


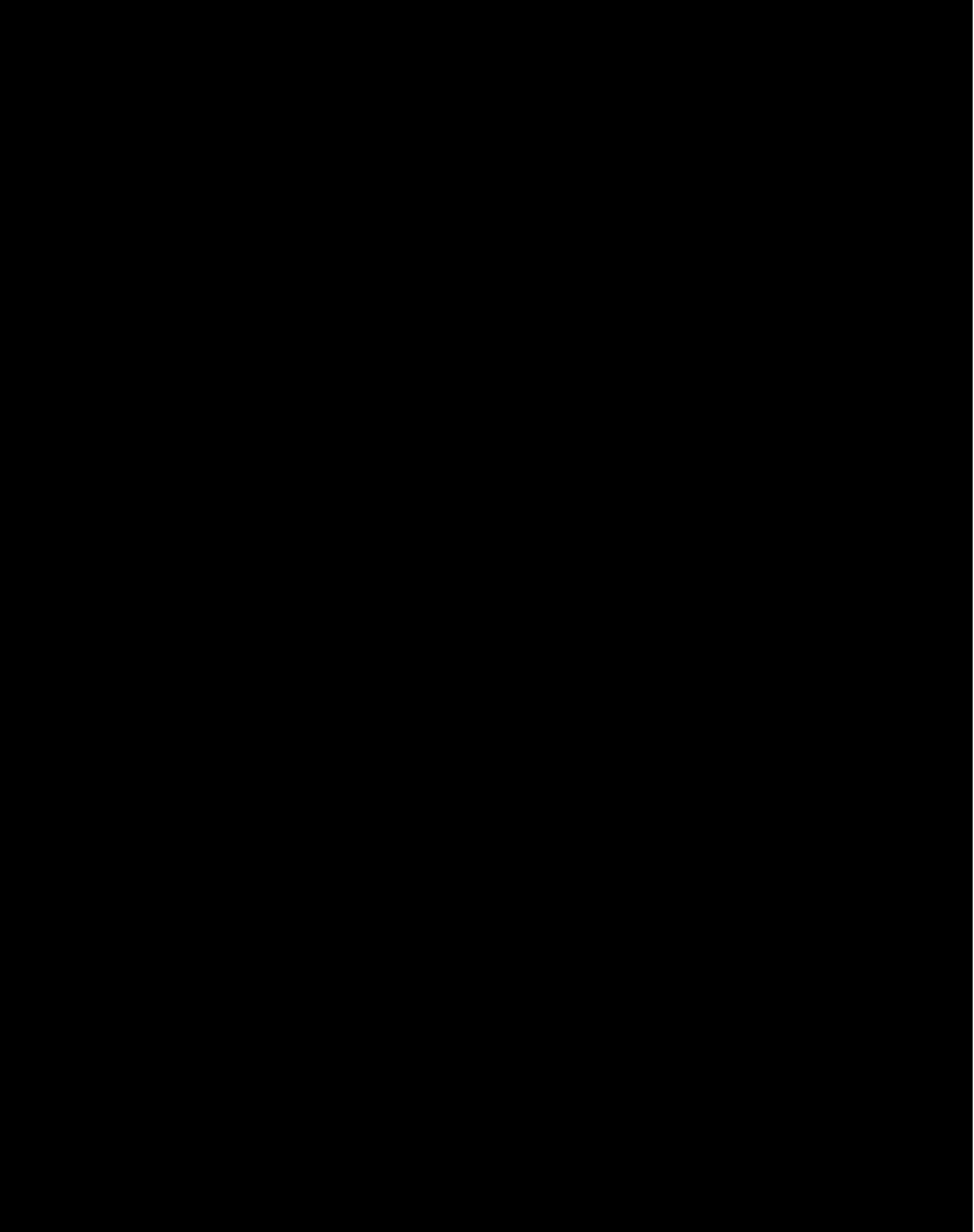












**PROOF OF SERVICE**

I am a citizen of the United States of America and I am employed in San Diego, California. I am over the age of 18 and not a party to the within action.

On May 3, 2022, I served the within **PLAINTIFFS' DEPOSITION OF DEFENDANT UNDER FEDERAL RULE OF CIVIL PROCEDURE 30(b)(6)** on the parties or their counsel shown at the email addresses below:

Apple-Masimo@gibsondunn.com

whapple-  
masimoservicelist@wilmerhale.com

Joshua H. Lerner  
JLerner@gibsondunn.com

H. Mark Lyon,  
MLyon@gibsondunn.com

Brian M. Buroker  
BBuroker@gibsondunn.com

Brian K. Andrea  
BAndrea@gibsondunn.com

Brian A. Rosenthal  
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Ilissa Samplin  
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Sarah R. Frazier  
sarah.frazier@wilmerhale.com

Kenneth G. Parker  
ken.parker@haynesboone.com

Jason T. Lao  
Jason.lao@haynesboone.com

I certify and declare under penalty of perjury under the laws of the State of California that I am a member of the bar of this Court, and that the forgoing is true and correct.

Executed on May 3, 2022, at Encinitas, California.

/s/ Adam B. Powell

Adam Powell

35206161

# Exhibit 4

8/5/2022

Masimo Corporation, et al. v. Apple, Inc.  
Highly Confidential - Attorneys' Eyes Only

Jackie Harlow 30(b)(6)

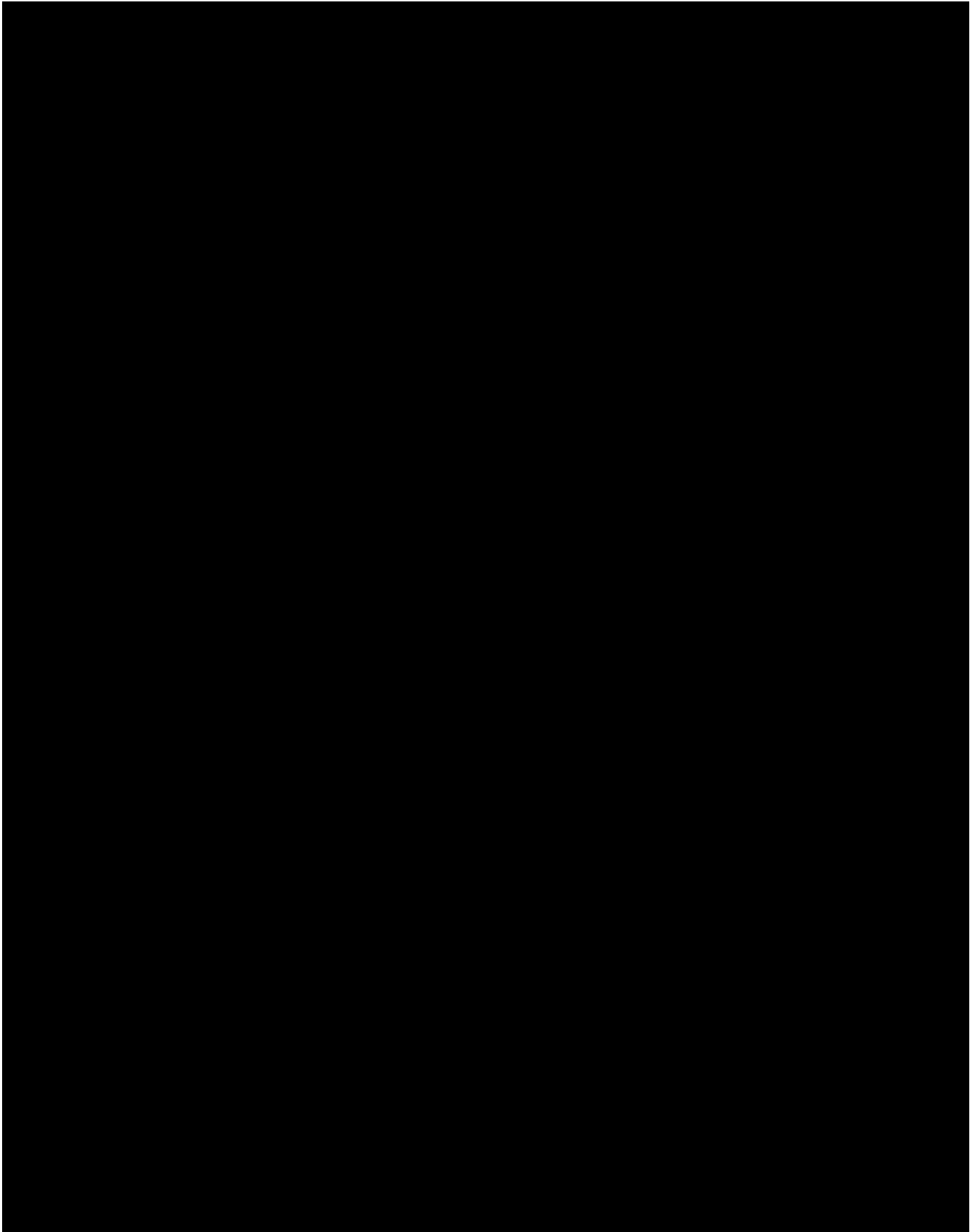
Page 1	Page 3
<p>IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA SOUTHERN DIVISION</p> <hr/> <p>MASIMO CORPORATION, ) a Delaware corporation; and ) CERCACOR LABORATORIES, INC., ) a Delaware corporation, ) Plaintiffs, ) v ) Case No 8:20-cv-00048 APPLE INC., a California ) JVS-JDE corporation, ) Defendant )</p> <hr/> <p>HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY 30(b)(6) Videotaped Deposition of APPLE, INC., by and through their corporate representative JACKIE HARLOW Conducted Remotely via Zoom Friday August 5, 2022 10:03 a.m. MDT</p> <p>Reported by Lisa A. Knight, RDR, CRR, RSA</p> <hr/> <p>DIGITAL EVIDENCE GROUP 1730 M Street, NW, Suite 812 Washington, D.C. 20036 (202) 232-0646</p>	<p>1 APPEARANCES 2 (All appearing remotely) 3 4 COUNSEL FOR THE PLAINTIFFS KNOBBE, MARTENS, OLSON &amp; BEAR, LLP 5 BY: MARK KACHNER, ESQUIRE mark.kachner@knobbe.com 6 1925 Century Park East Suite 600 7 Los Angeles, California 90067 310.551.3450 8 BY: MATTHEW PHAM, ESQUIRE matthew.pham@knobbe.com 9 2040 Main Street 14th Floor 10 Irvine, California 92614 11 949.760.0404 12 13 COUNSEL FOR THE DEFENDANT AND THE WITNESS: WILMER CUTLER PICKERING HALE AND 14 DORR, LLP 15 BY: SARAH R. FRAZIER, ESQUIRE sarah.frazier@wilmerhale.com 16 60 State Street Boston, Massachusetts 02109 17 617.526.6000 18 19 ALSO PRESENT: 20 NATALIE POUS, ESQUIRE - Apple Inc. 21 DANIEL HOLMSTOCK, Videographer 22</p>
Page 2	Page 4
<p>1 Pursuant to Notice, the 30(b)(6) 2 videotaped deposition of APPLE, INC., 3 by and through their corporate representative 4 JACKIE HARLOW, was conducted remotely via 5 Zoom on behalf of the Plaintiffs, at 6 10:03 a.m. MDT, on Friday, August 5, 2022, 7 reported stenographically by Lisa A. Knight, 8 Realtime Diplomat Reporter, Certified 9 Realtime Reporter, and Realtime Systems 10 Administrator. 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p>1 INDEX 2 JACKIE HARLOW 3 AUGUST 5, 2022 4 EXAMINATION OF JACKIE HARLOW: 5 BY MR. KACHNER 8 6 BY MS. FRAZIER 139 7 8 DEPOSITION EXHIBITS 9 JACKIE HARLOW 10 AUGUST 5, 2022 11 NUMBER DESCRIPTION PAGE 12 Harlow 286 LinkedIn Profile of Jackie Harlow, No Bates 8 13 Harlow 287 Defendant Apple Inc.'s Fourth Supplemental 14 Objections and Responses to Plaintiffs Masimo 15 Corporation and Cercacor Laboratories, Inc.'s 16 Fifth Set of 17 Interrogatories to Defendant Apple Inc. (No. 22), No Bates 18 Harlow 288 Photograph, No Bates 80 19 Harlow 289 Photograph, No Bates 83 20 Harlow 290 Photograph, No Bates 90 21 22</p>

1 (Pages 1 to 4)

8/5/2022

Masimo Corporation, et al. v. Apple, Inc.  
Highly Confidential - Attorneys' Eyes Only

Jackie Harlow 30(b)(6)

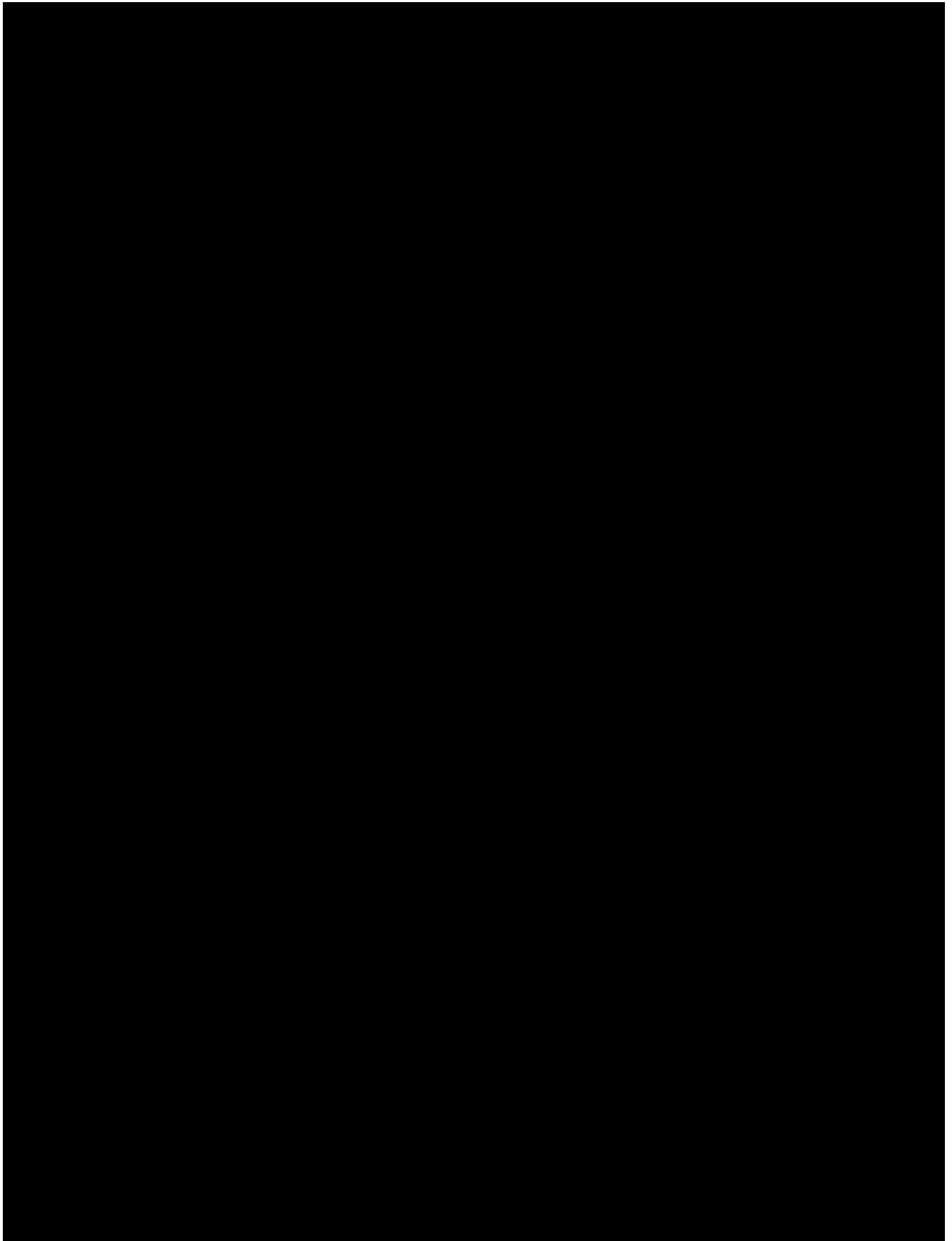




8/5/2022

Masimo Corporation, et al. v. Apple, Inc.  
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Jackie Harlow 30(b)(6)



8/5/2022

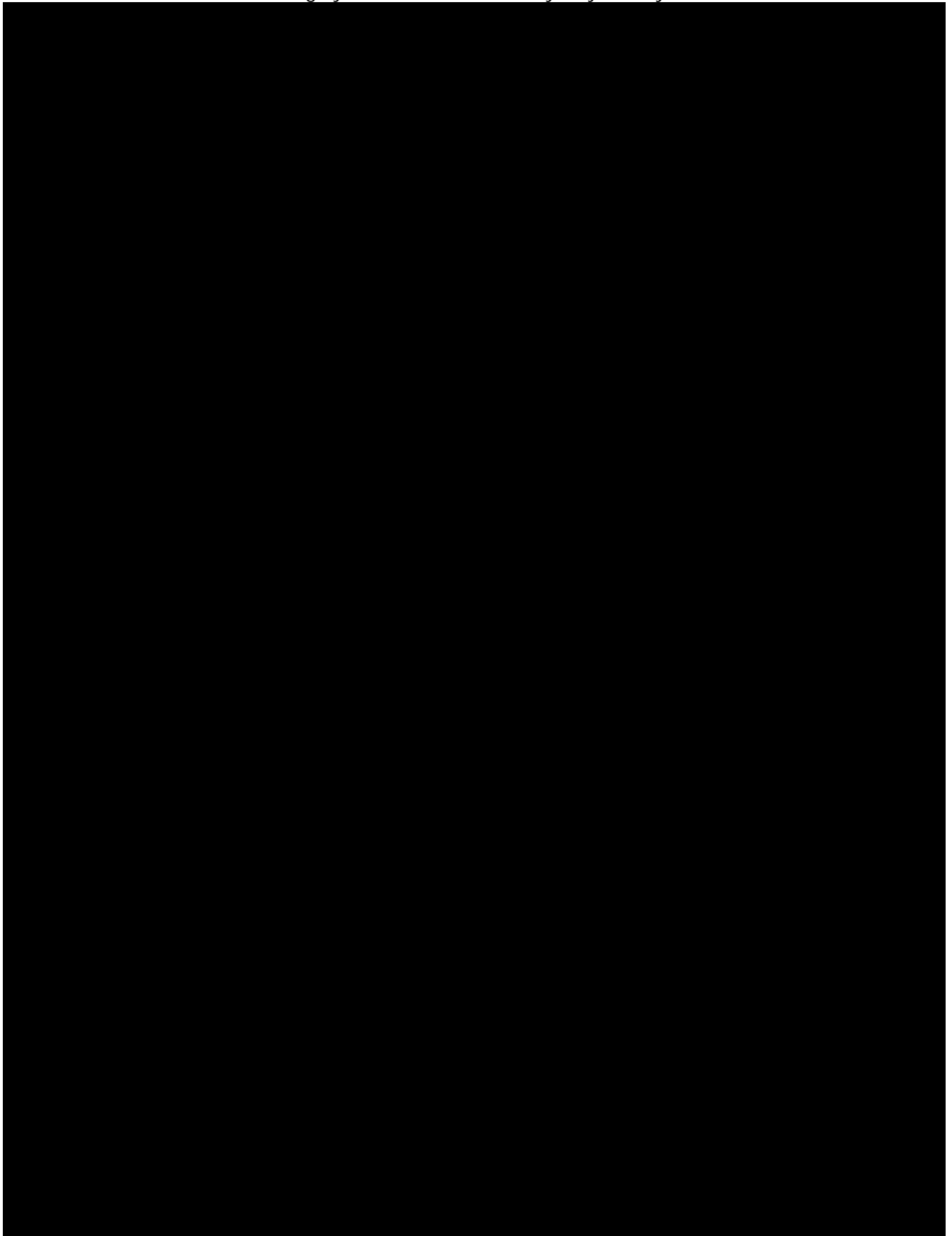
Masimo Corporation, et al. v. Apple, Inc.  
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Jackie Harlow 30(b)(6)

8/5/2022

Masimo Corporation, et al. v. Apple, Inc.  
Highly Confidential - Attorneys' Eyes Only

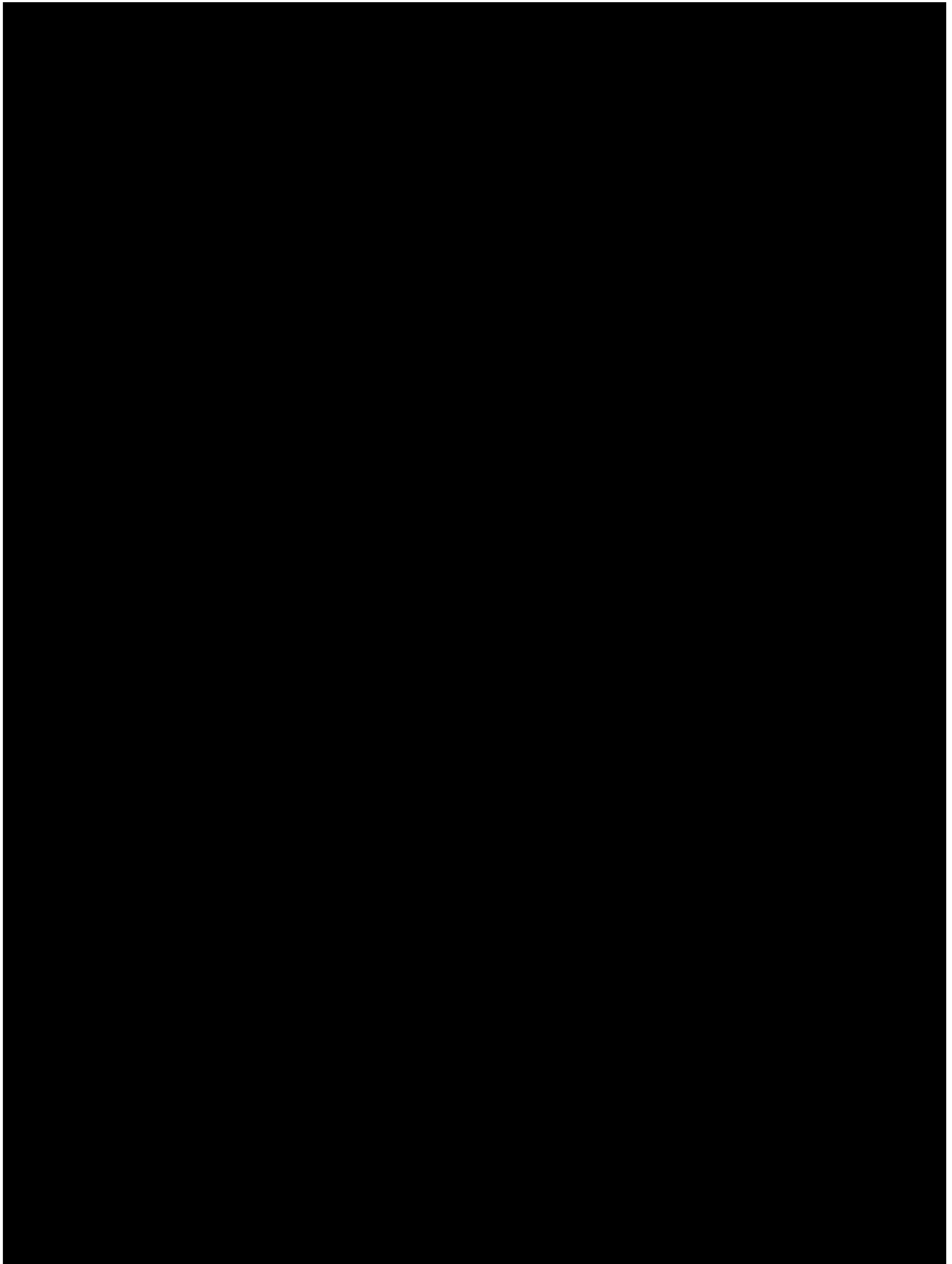
Jackie Harlow 30(b)(6)



8/5/2022

Masimo Corporation, et al. v. Apple, Inc.  
Highly Confidential - Attorneys' Eyes Only

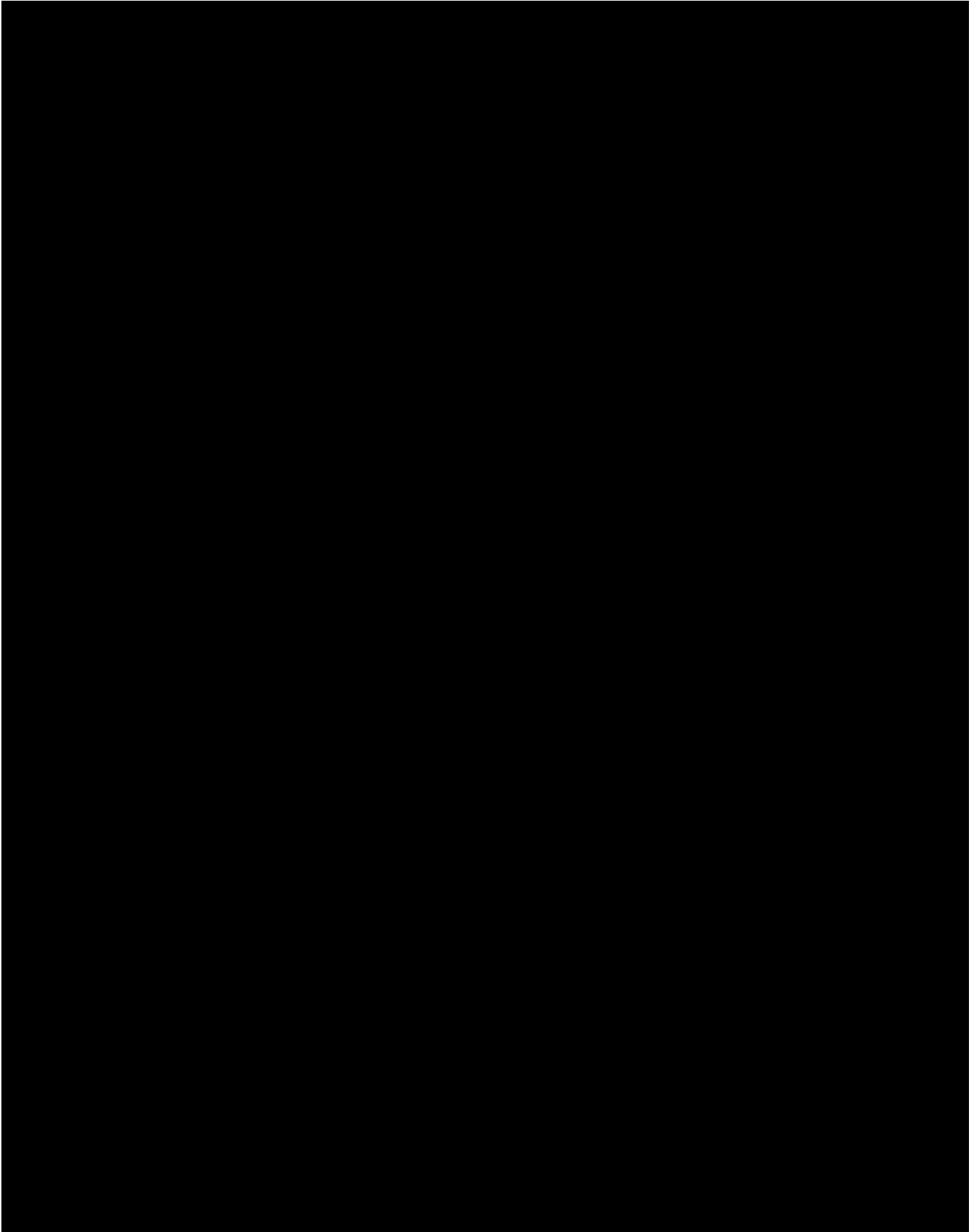
Jackie Harlow 30(b)(6)



8/5/2022

Masimo Corporation, et al. v. Apple, Inc.  
Highly Confidential - Attorneys' Eyes Only

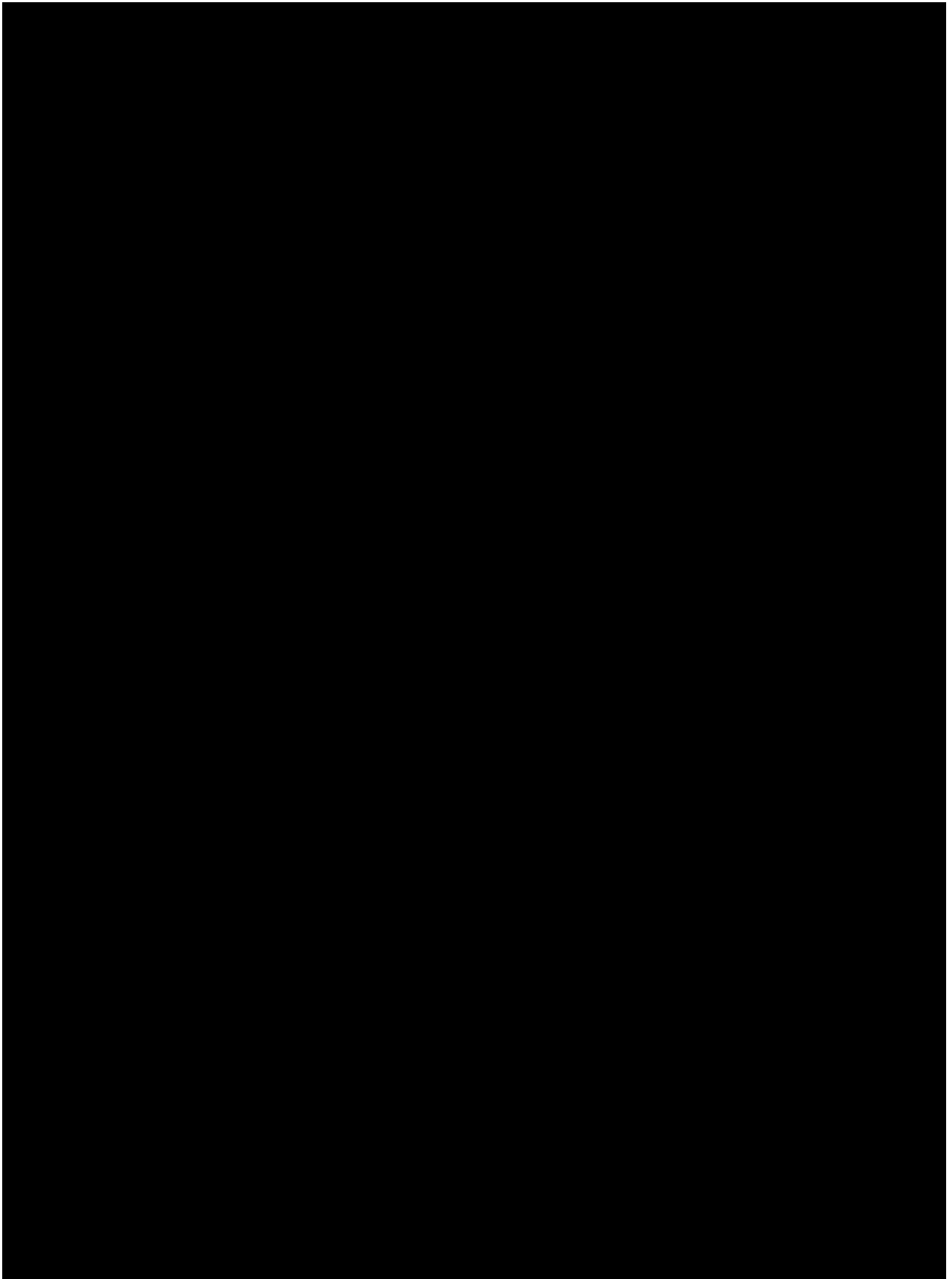
Jackie Harlow 30(b)(6)



8/5/2022

Masimo Corporation, et al. v. Apple, Inc.  
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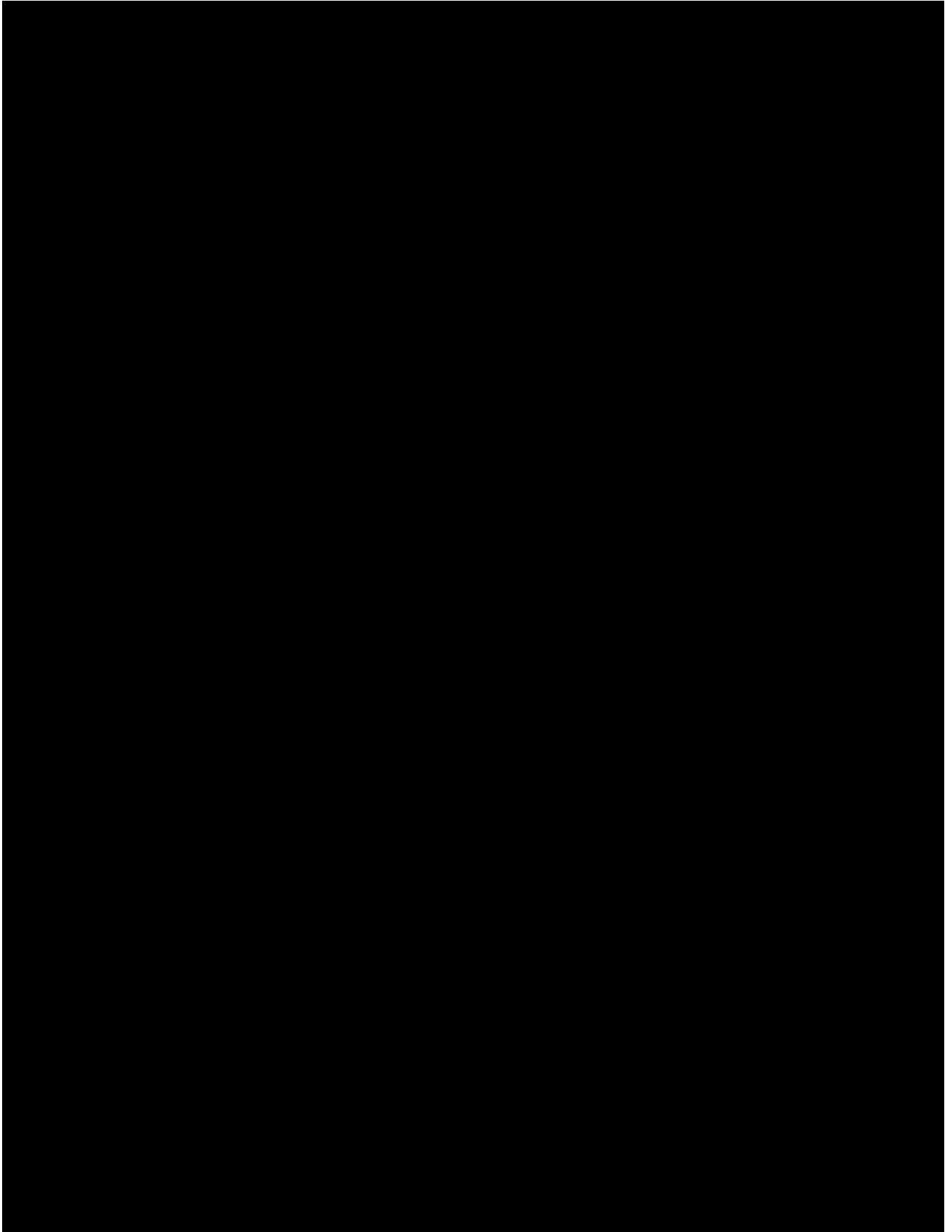
Jackie Harlow 30(b)(6)



8/5/2022

Masimo Corporation, et al. v. Apple, Inc.  
Highly Confidential - Attorneys' Eyes Only

Jackie Harlow 30(b)(6)





8/5/2022

Masimo Corporation, et al. v. Apple, Inc.  
Highly Confidential - Attorneys' Eyes Only

Jackie Harlow 30(b)(6)

Page 141	Page 143
<p>1 CERTIFICATE</p> <p>2 I, LISA A. KNIGHT, Registered</p> <p>3 Diplomat Reporter and Certified Realtime</p> <p>4 Reporter, do hereby certify that prior to the</p> <p>5 commencement of the examination, JACKIE</p> <p>6 HARLOW was duly sworn by me to testify to the</p> <p>7 truth, the whole truth, and nothing but the</p> <p>8 truth.</p> <p>9 I DO FURTHER CERTIFY that the</p> <p>10 foregoing is a verbatim transcript of the</p> <p>11 testimony as taken stenographically by and</p> <p>12 before me at the time, place, and on the date</p> <p>13 hereinbefore set forth, to the best of my</p> <p>14 ability, and that reading and signing was not</p> <p>15 requested.</p> <p>16 I DO FURTHER CERTIFY that I am</p> <p>17 neither a relative nor employee nor attorney</p> <p>18 nor counsel of any of the parties to this</p> <p>19 action, and that I am neither a relative nor</p> <p>20 employee of such attorney or counsel, and</p> <p>21 that I am not financially interested in the</p> <p>22 action.</p> <p>_____ LISA A. KNIGHT NCRA Registered Diplomat Reporter NCRA Certified Realtime Reporter NCRA Certified LiveNote Reporter NCRA Realtime Systems Administrator Dated: August 12, 2022</p>	<p>1 Digital Evidence Group, L.L.C.</p> <p>2 1730 M Street, NW, Suite 812</p> <p>3 Washington, D.C. 20036</p> <p>4 (202) 232-0646</p> <p>5 SIGNATURE PAGE</p> <p>6 Case: Masimo Corporation, et al. v. Apple, Inc.</p> <p>7 Witness Name: Jackie Harlow 30(b)(6)</p> <p>8 Deposition Date: August 5, 2022</p> <p>9 I do hereby acknowledge that I have read</p> <p>10 and examined the foregoing pages</p> <p>11 of the transcript of my deposition and that:</p> <p>12 (Check appropriate box):</p> <p>13 ( ) The same is a true, correct and</p> <p>14 complete transcription of the answers given by</p> <p>15 me to the questions therein recorded.</p> <p>16 ( ) Except for the changes noted in the</p> <p>17 attached Errata Sheet, the same is a true,</p> <p>18 correct and complete transcription of the</p> <p>19 answers given by me to the questions therein</p> <p>20 recorded.</p> <p>_____ DATE WITNESS SIGNATURE</p> <p>_____ DATE NOTARY</p>
Page 142	Page 144
<p>1 Jackie Harlow 30(b)(6), c/o</p> <p>2 WILMER CUTLER PICKERING HALE AND DORR, LLP</p> <p>3 60 State Street</p> <p>4 Boston, Massachusetts 02109</p> <p>5 Case: Masimo Corporation, et al. v. Apple, Inc.</p> <p>6 Date of deposition: August 5, 2022</p> <p>7 Deponent: Jackie Harlow 30(b)(6)</p> <p>8 Please be advised that the transcript in the above</p> <p>9 referenced matter is now complete and ready for signature.</p> <p>10 The deponent may come to this office to sign the transcript,</p> <p>11 a copy may be purchased for the witness to review and sign,</p> <p>12 or the deponent and/or counsel may waive the option of</p> <p>13 signing. Please advise us of the option selected.</p> <p>14 Please forward the errata sheet and the original signed</p> <p>15 signature page to counsel noticing the deposition, noting the</p> <p>16 applicable time period allowed for such by the governing</p> <p>17 Rules of Procedure. If you have any questions, please do</p> <p>18 not hesitate to call our office at (202)-232-0646.</p> <p>19 Sincerely,</p> <p>20 Digital Evidence Group</p> <p>21 Copyright 2022 Digital Evidence Group</p> <p>22 Copying is forbidden, including electronically, absent</p> <p>express written consent.</p>	<p>1 Digital Evidence Group, LLC</p> <p>2 1730 M Street, NW, Suite 812</p> <p>3 Washington, D.C. 20036</p> <p>4 (202)232-0646</p> <p>5 ERRATA SHEET</p> <p>6 Case: Masimo Corporation, et al. v. Apple, Inc.</p> <p>7 Witness Name: Jackie Harlow 30(b)(6)</p> <p>8 Deposition Date: August 5, 2022</p> <p>9 Page No. Line No. Change</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>Signature Date</p>

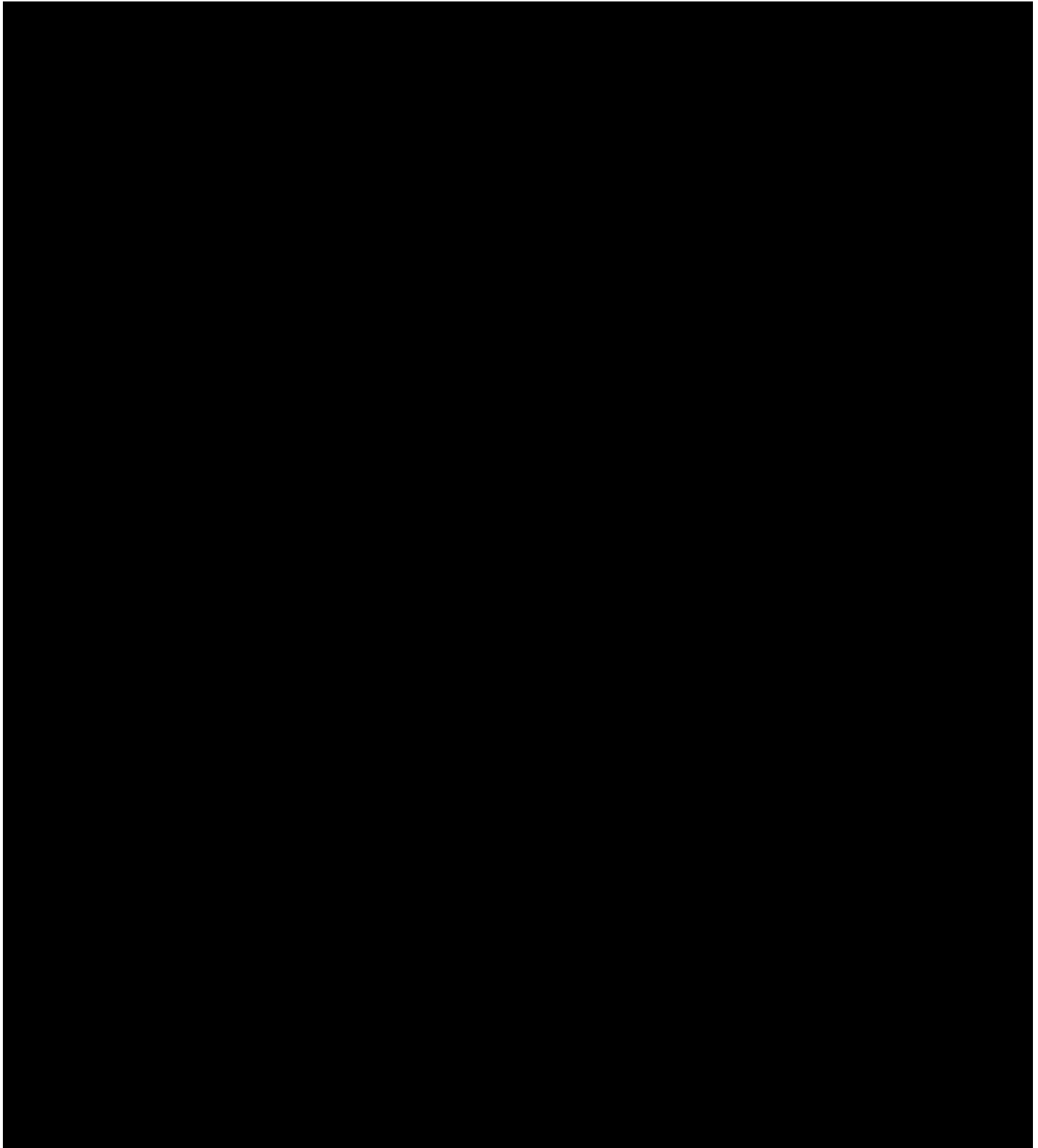
# EXHIBIT D

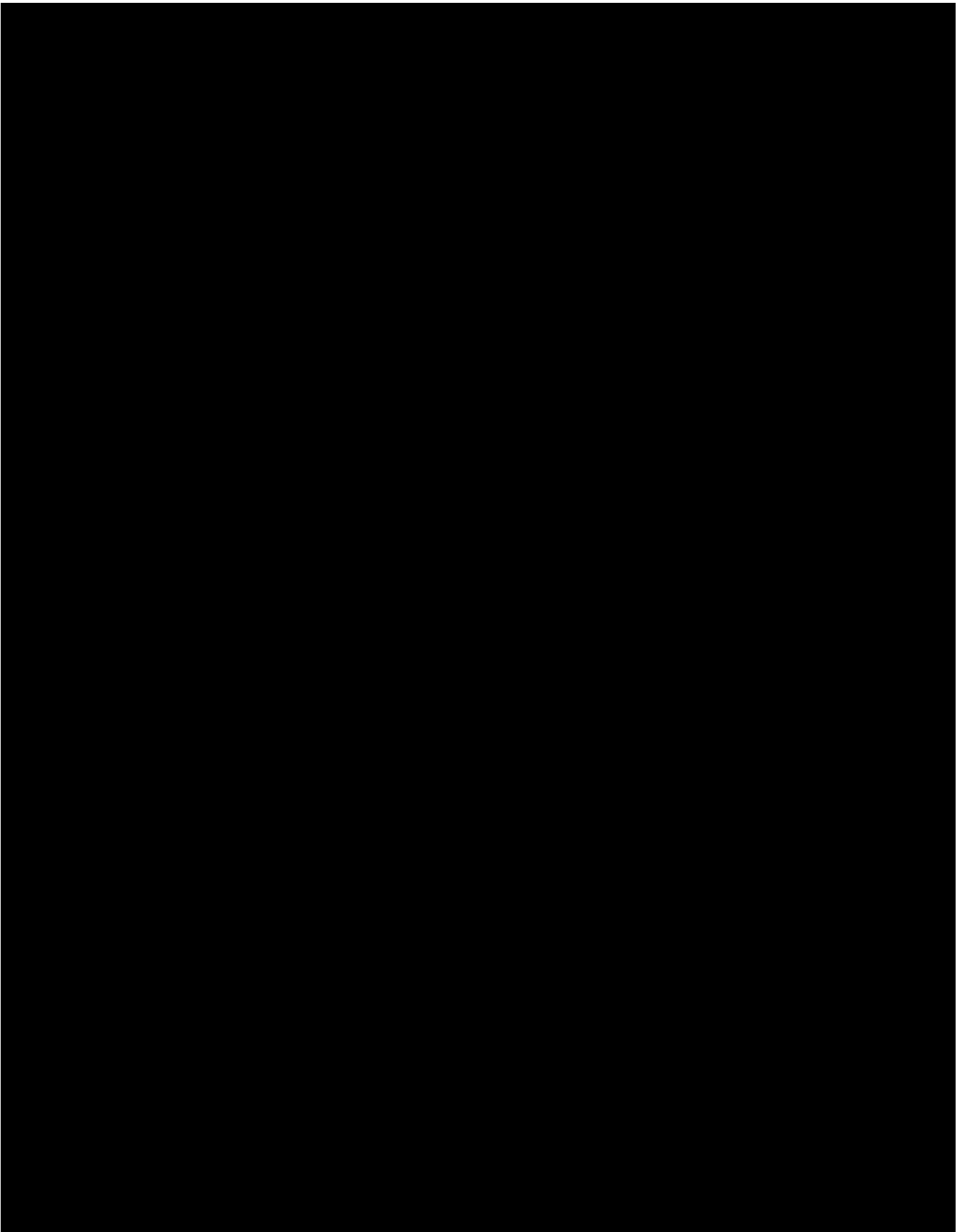
**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

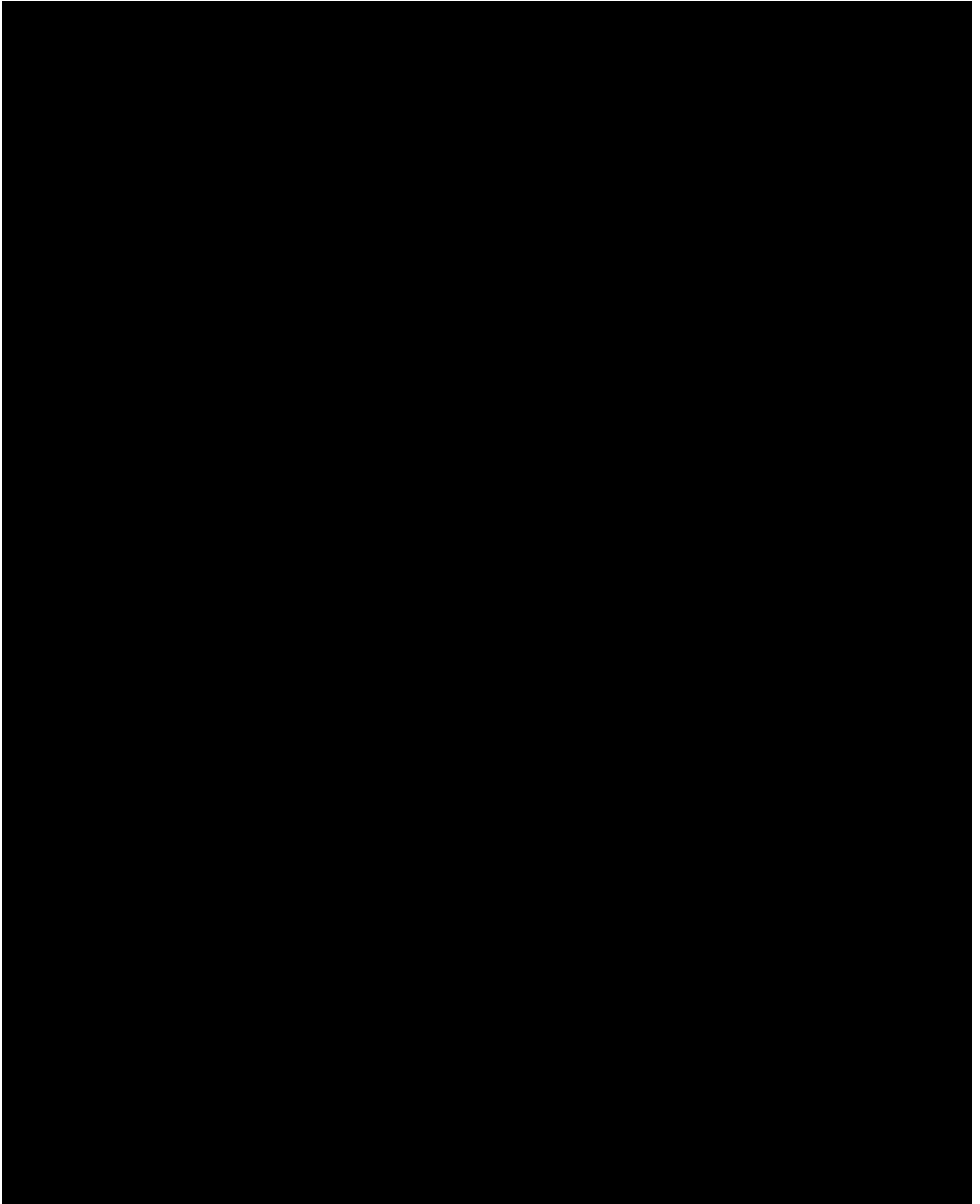
APPLE INC.,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 22-1377-MN-JLH
v.	)	
	)	<b>JURY TRIAL DEMANDED</b>
MASIMO CORPORATION and	)	
SOUND UNITED, LLC,	)	<b>CONFIDENTIAL –</b>
	)	<b>ATTORNEYS’ EYES ONLY</b>
Defendants.	)	
<hr/>		
MASIMO CORPORATION and	)	
SOUND UNITED, LLC,	)	
	)	
Counter-Claimants,	)	
	)	
v.	)	
	)	
APPLE INC.,	)	
	)	
Counter-Defendant.	)	
<hr/>		
APPLE INC.,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 22-1378-MN-JLH
v.	)	
	)	<b>JURY TRIAL DEMANDED</b>
MASIMO CORPORATION and	)	
SOUND UNITED, LLC,	)	<b>CONFIDENTIAL –</b>
	)	<b>ATTORNEYS’ EYES ONLY</b>
Defendants.	)	
<hr/>		
MASIMO CORPORATION,	)	
CERCACOR LABORATORIES, INC., and	)	
SOUND UNITED, LLC,	)	
	)	
Counter-Claimants,	)	
	)	
v.	)	
	)	
APPLE INC.,	)	
	)	
Counter-Defendant.	)	

**DECLARATION OF MARK A. FORD IN SUPPORT OF APPLE’S LETTER TO THE  
HONORABLE JENNIFER L. HALL FROM DAVID E. MOORE**

I, Mark A. Ford, declare as follows:









I declare under penalty of perjury under the laws of the United States of America that this Declaration is true and correct.

Executed this 26th day of July 2023.

By: /s/ Mark A. Ford

Mark A. Ford



# EXHIBIT 1

CONFIDENTIAL – ATTORNEYS’ EYES ONLY

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,

*Plaintiff,*

v.

MASIMO CORPORATION and  
SOUND UNITED, LLC,

*Defendants.*

C.A. No. 22-1378-MN-JLH

**JURY TRIAL DEMANDED**

MASIMO CORPORATION and  
CERCACOR LABORATORIES, INC.,

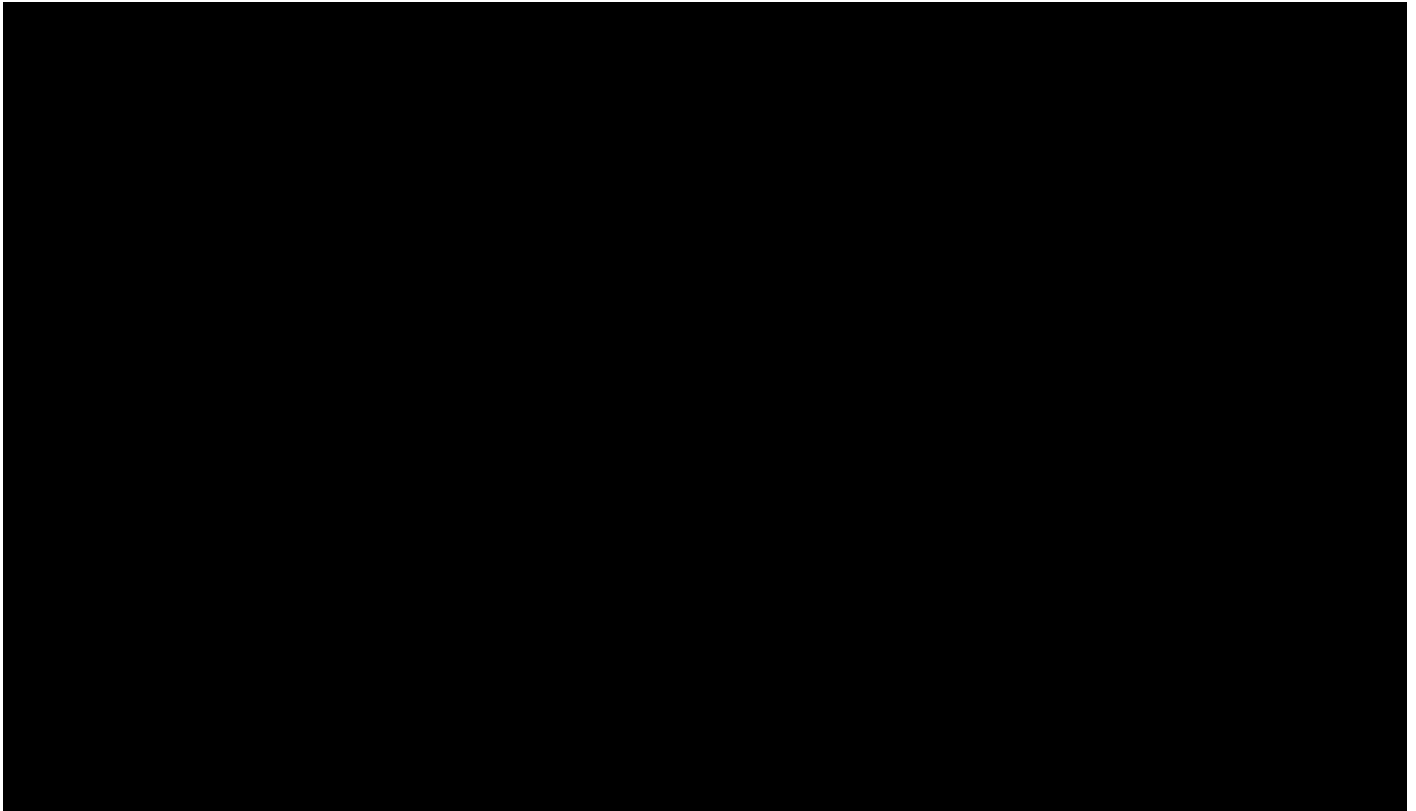
*Counter-Claimants,*

v.

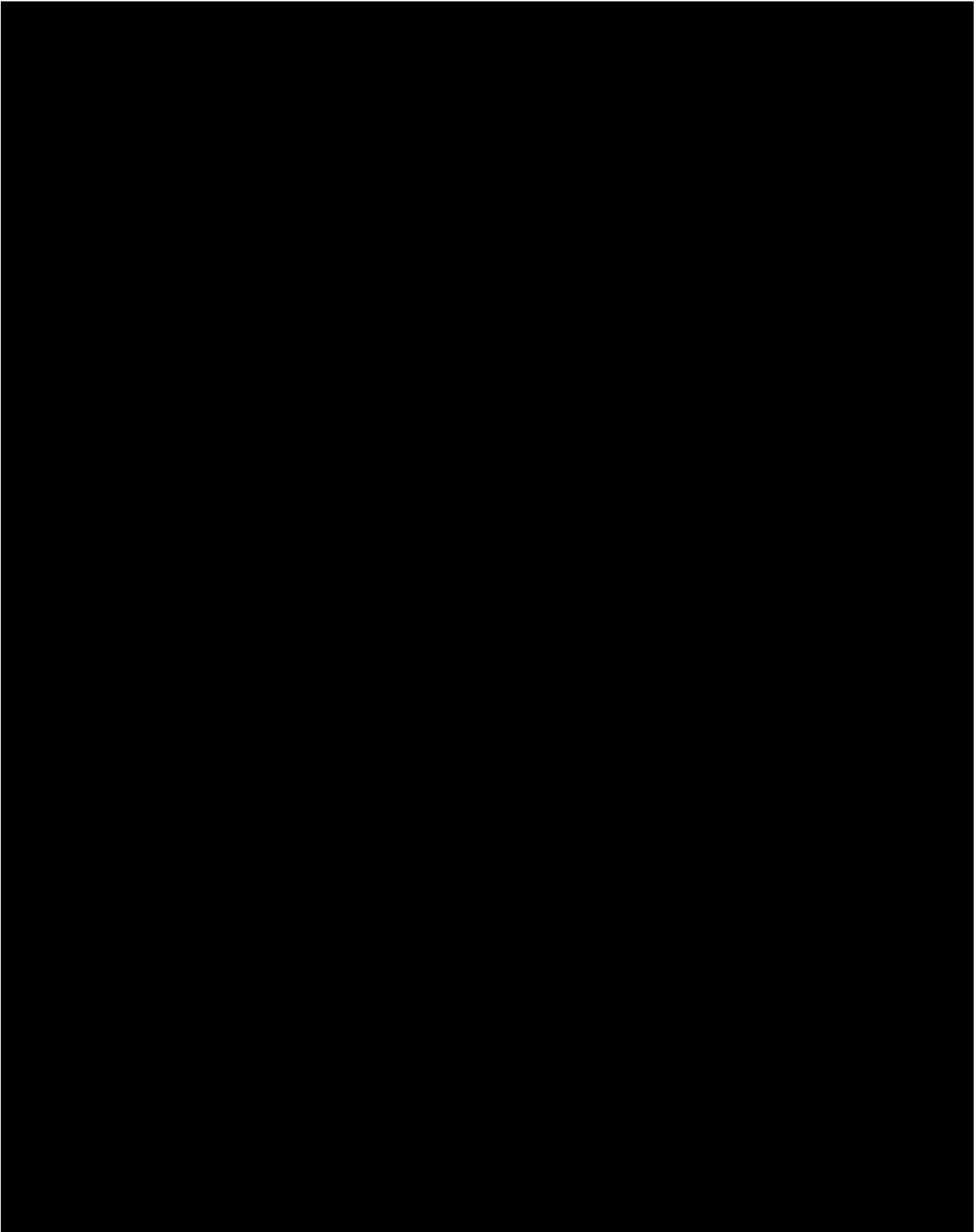
APPLE INC.

*Counter-Defendant.*

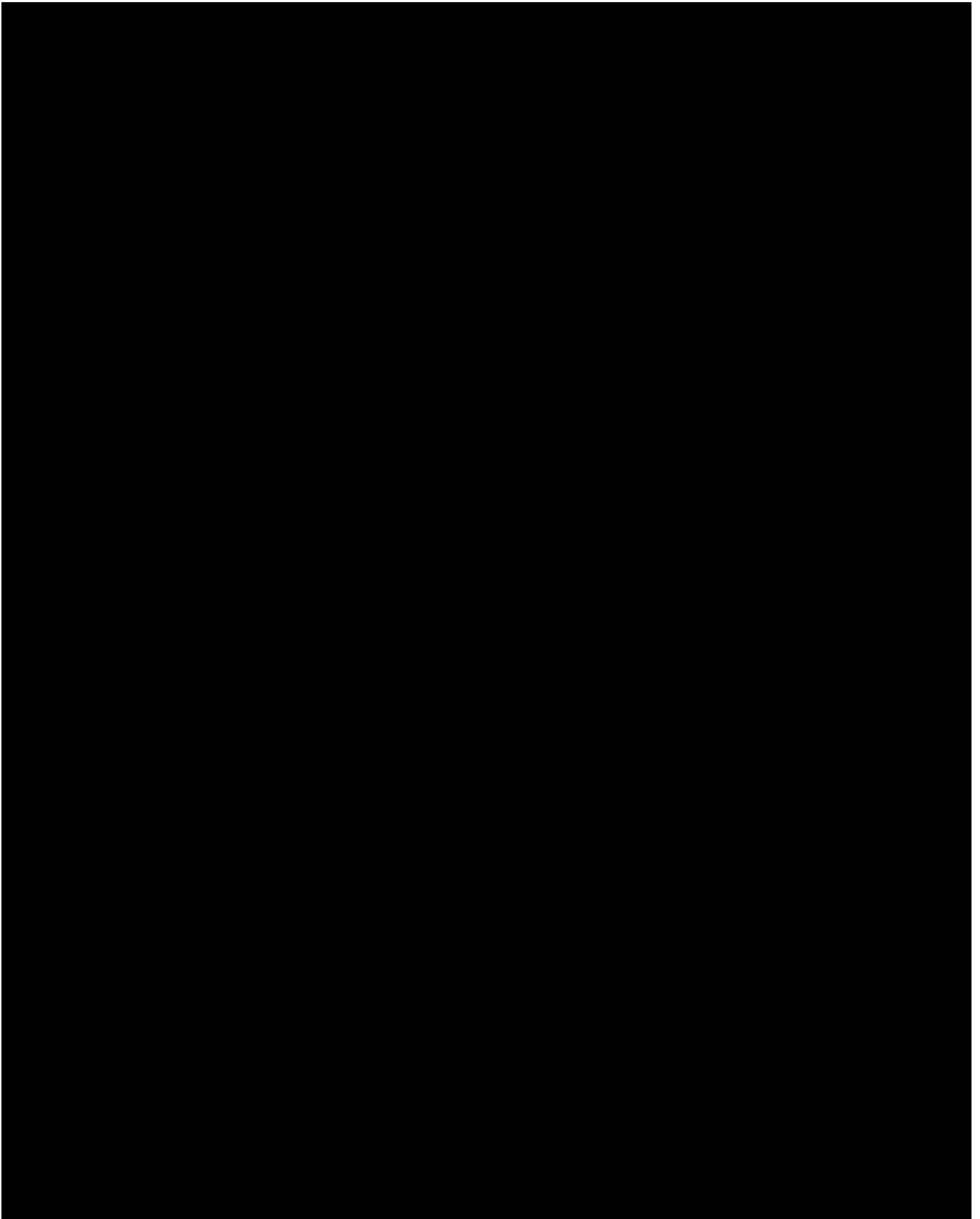
**DEFENDANT MASIMO CORPORATION’S RESPONSES AND OBJECTIONS TO  
APPLE INC.’S SECOND SET OF INTERROGATORIES (4-14)**



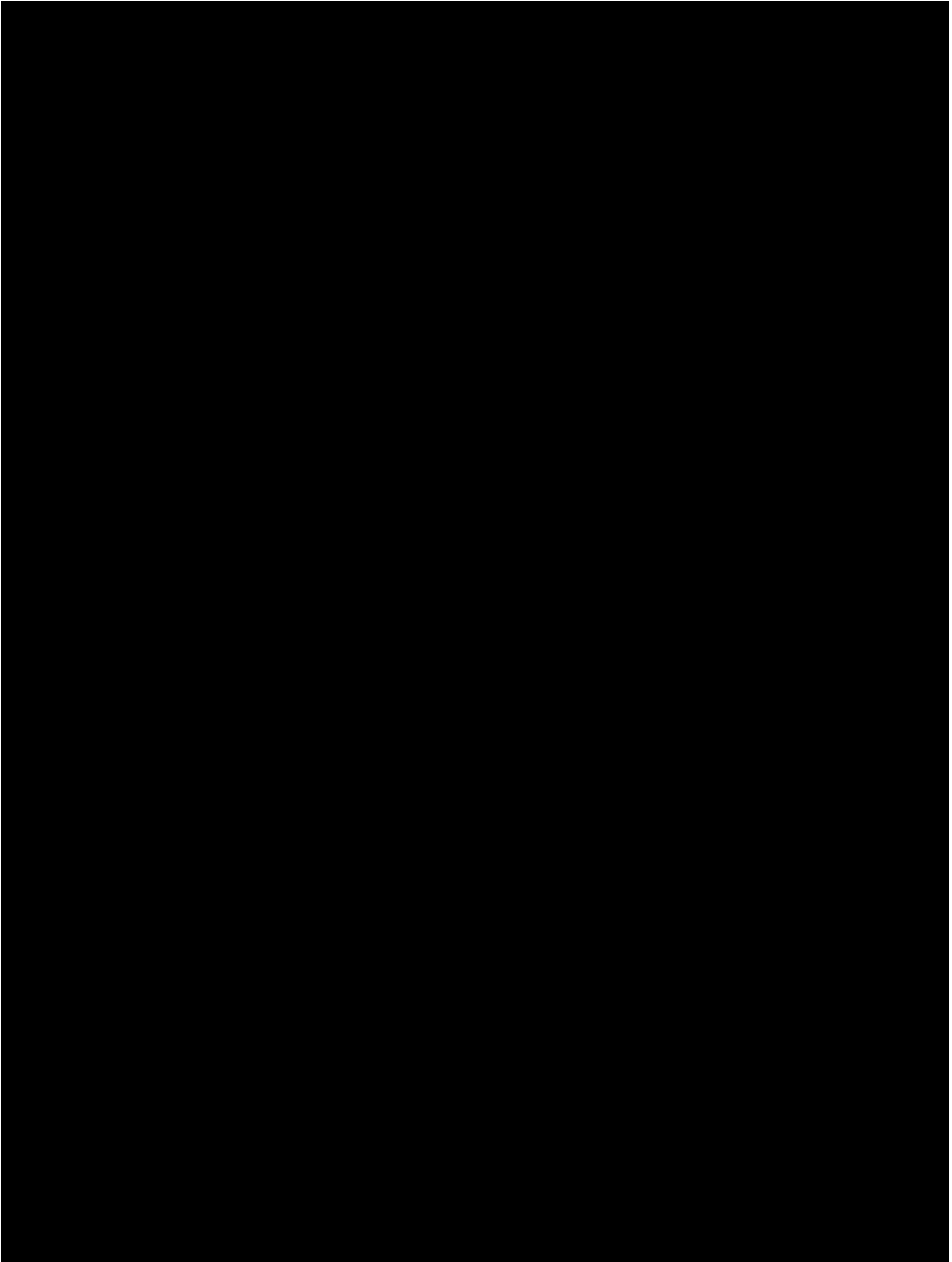
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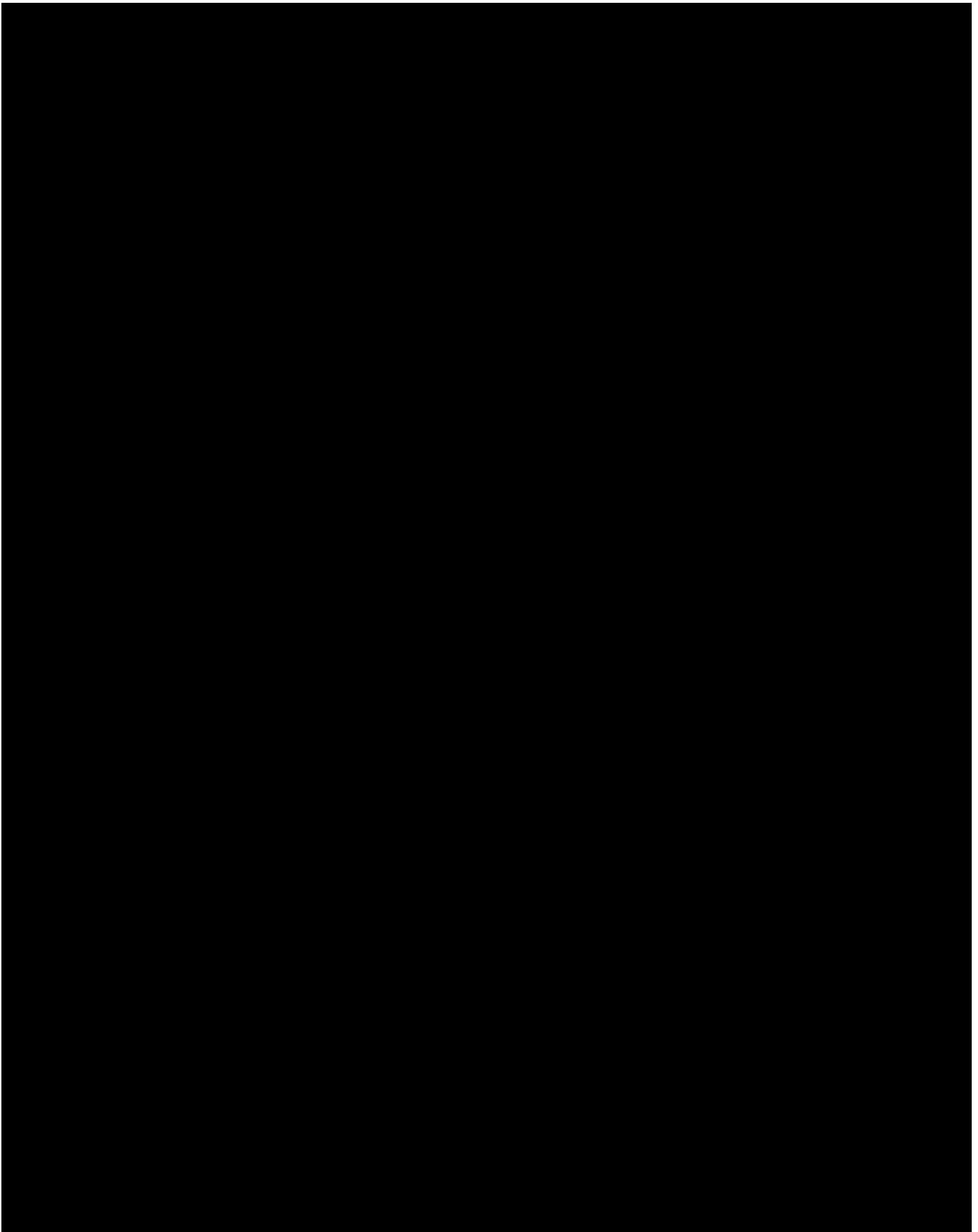
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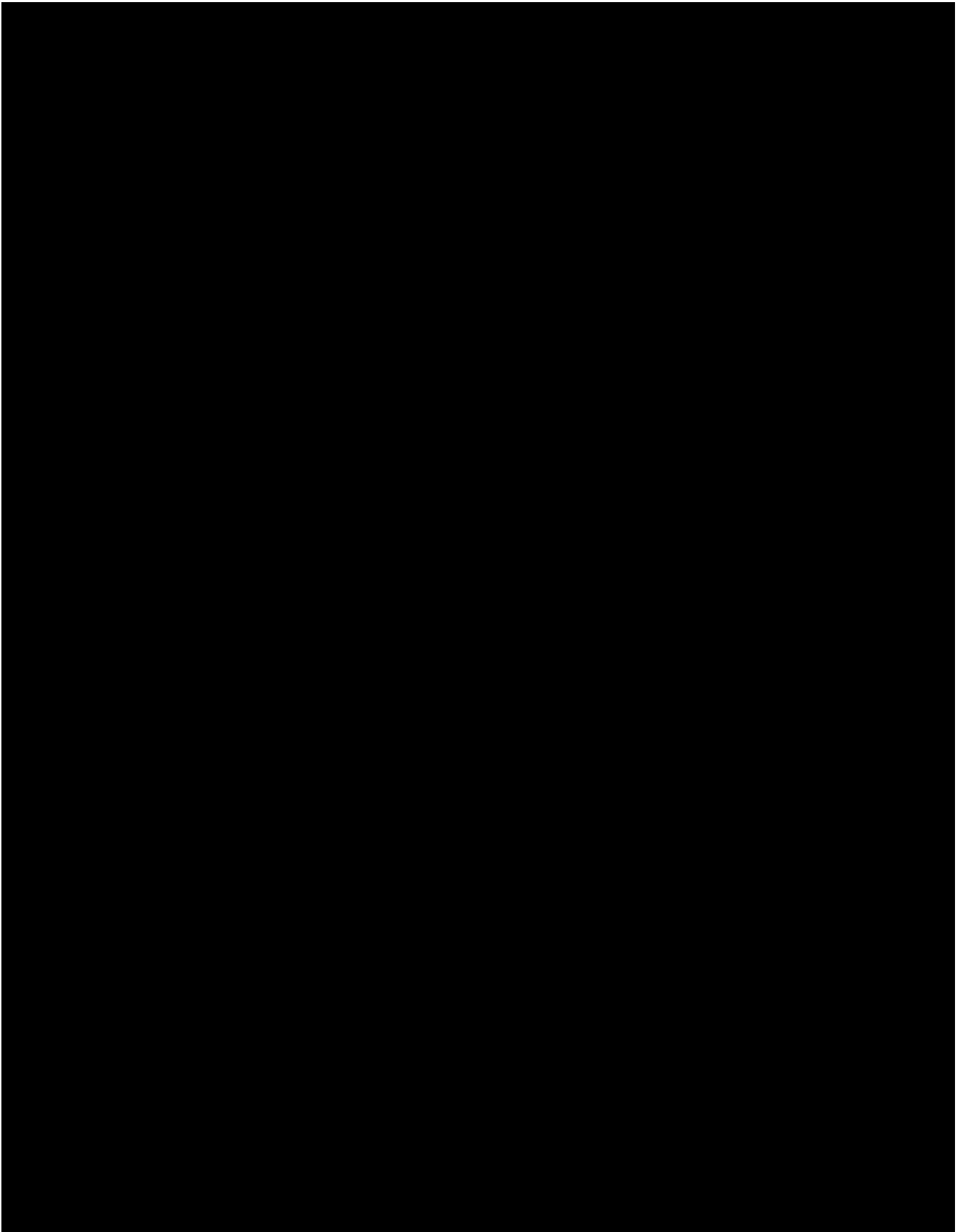
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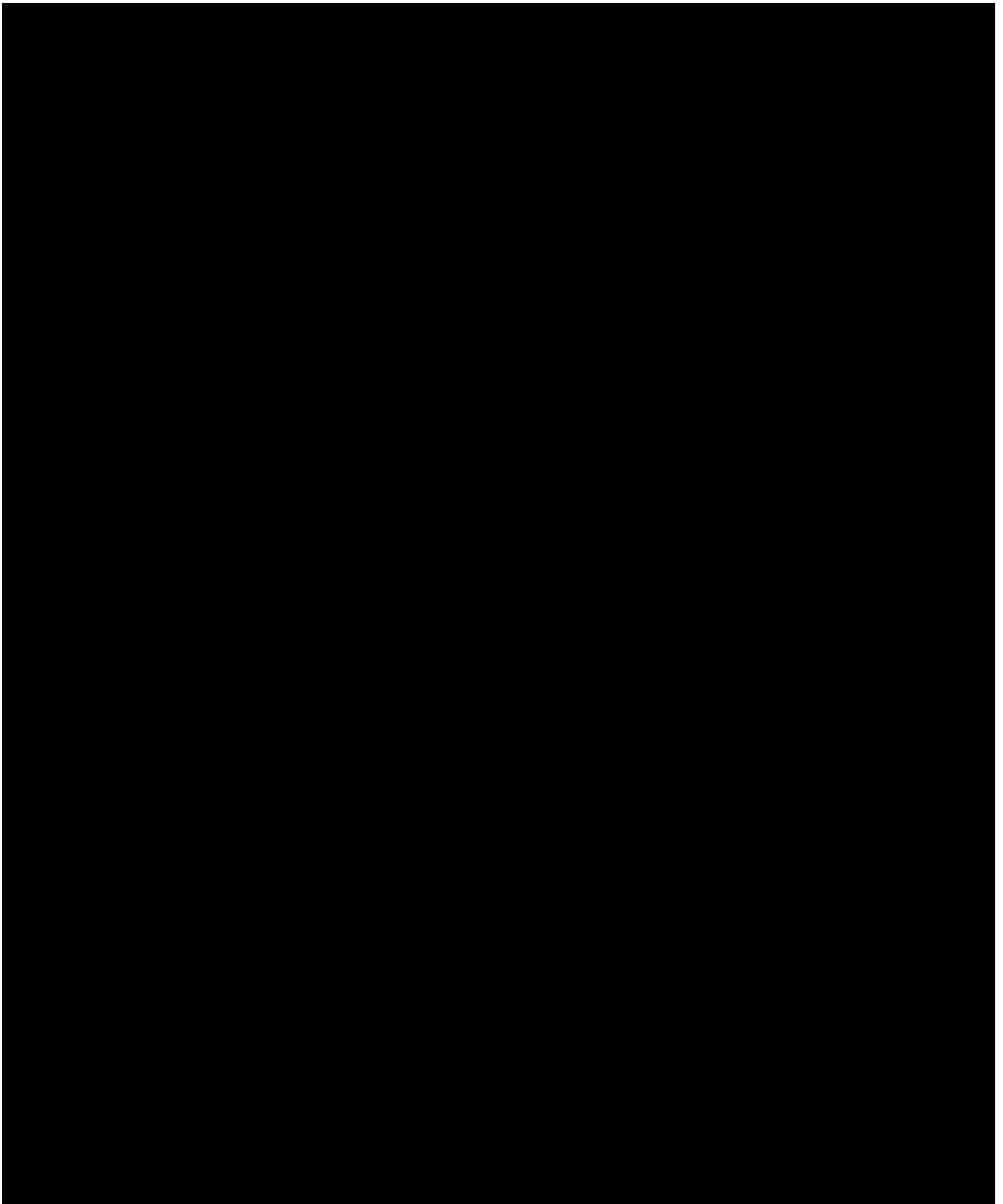


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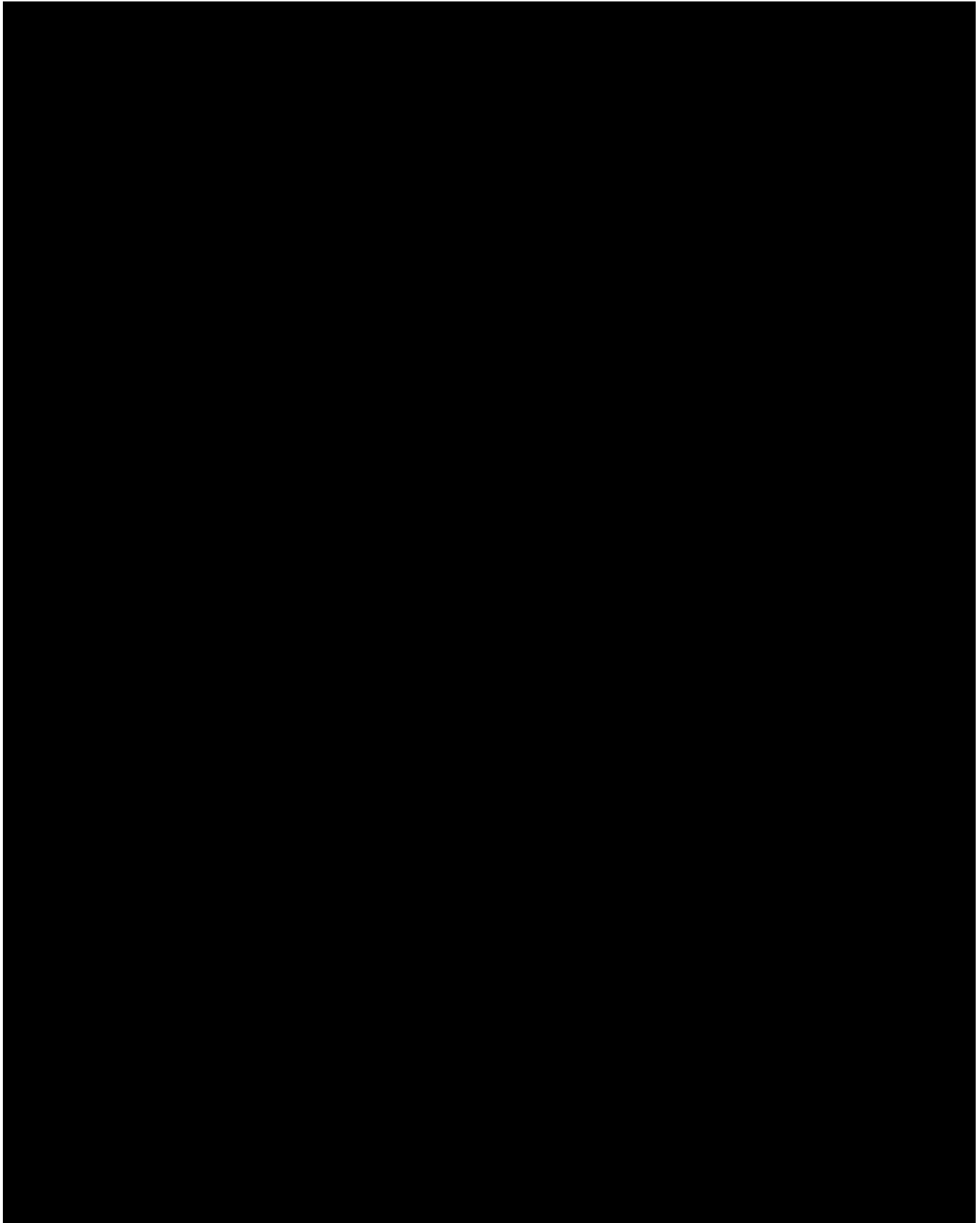
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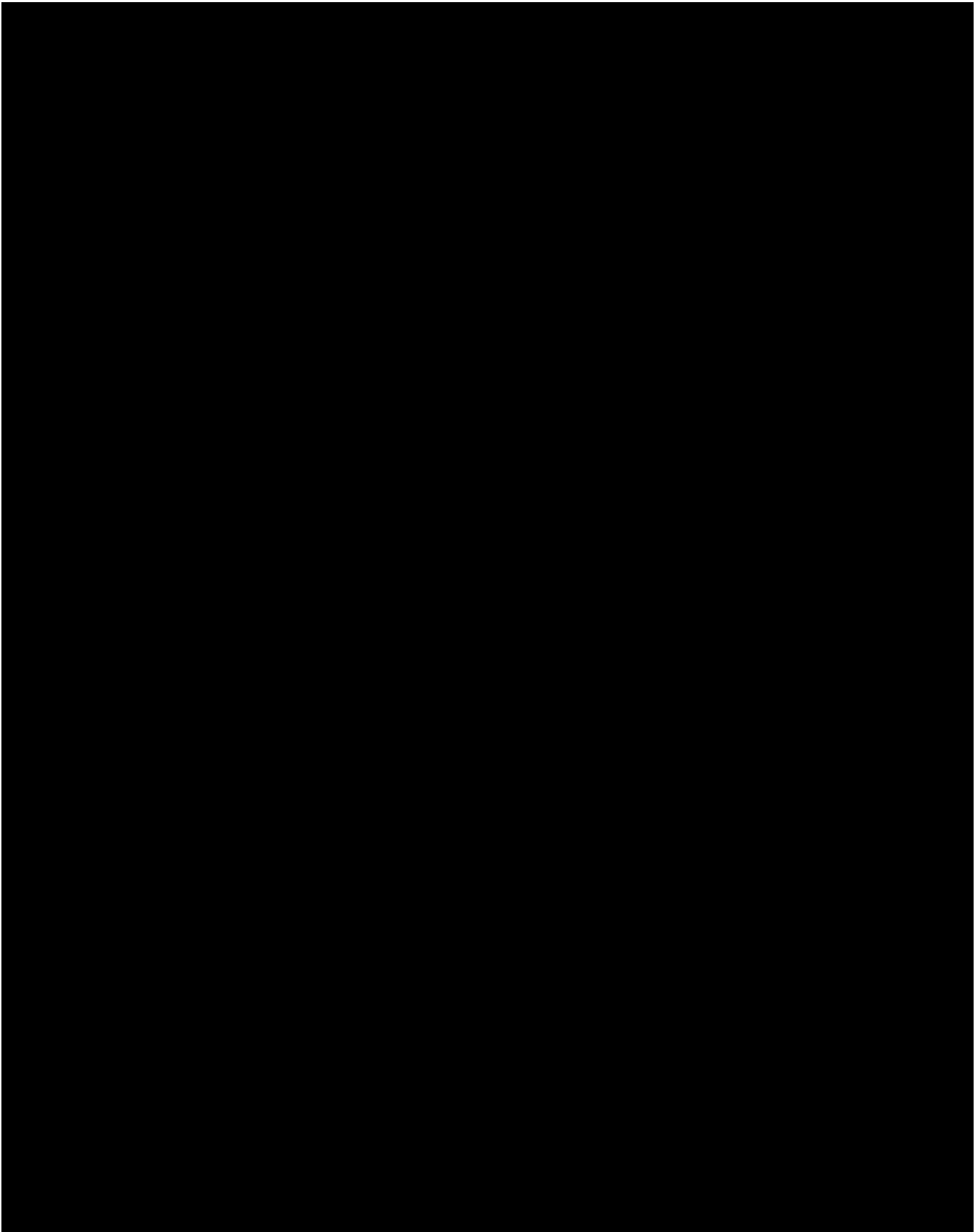
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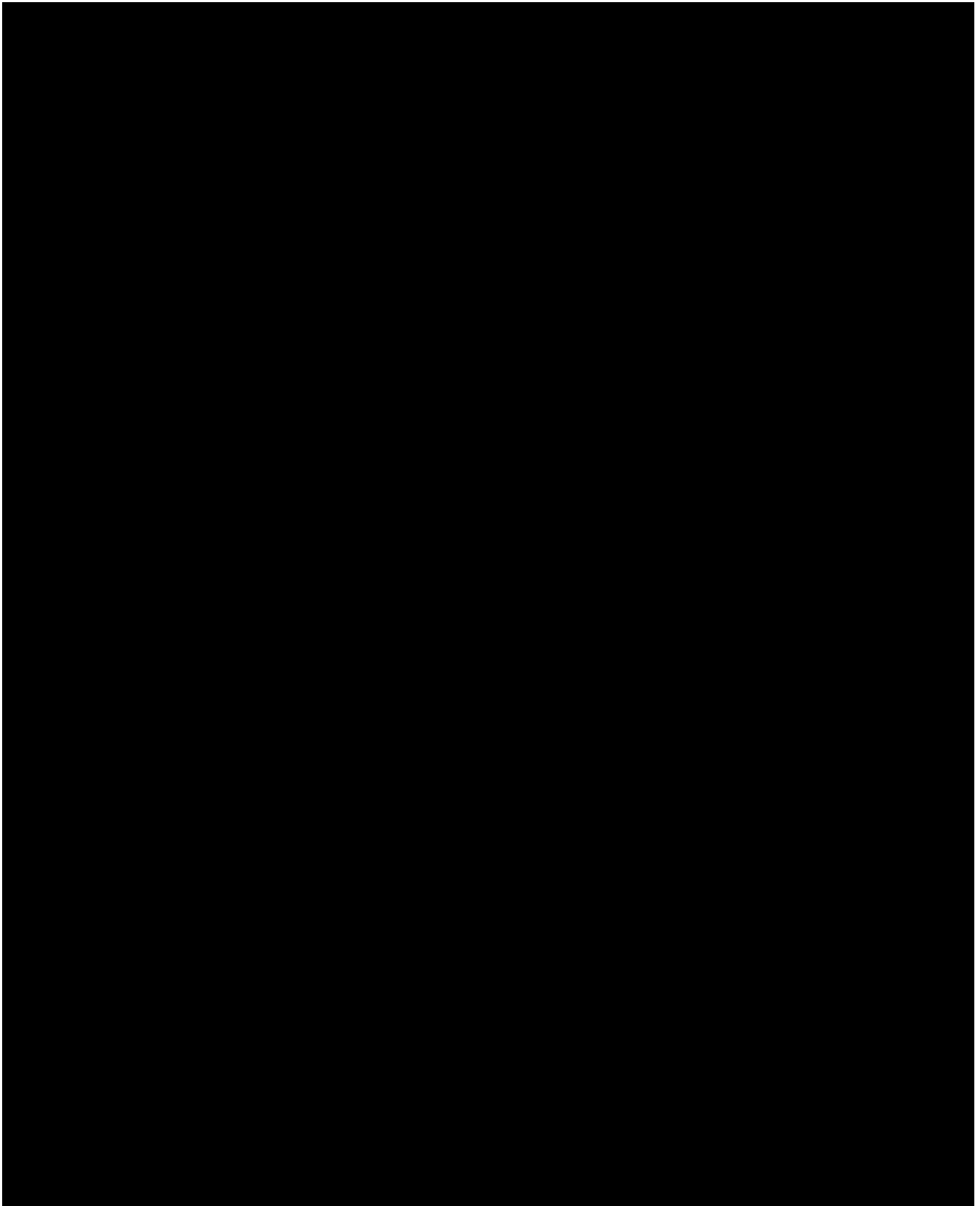
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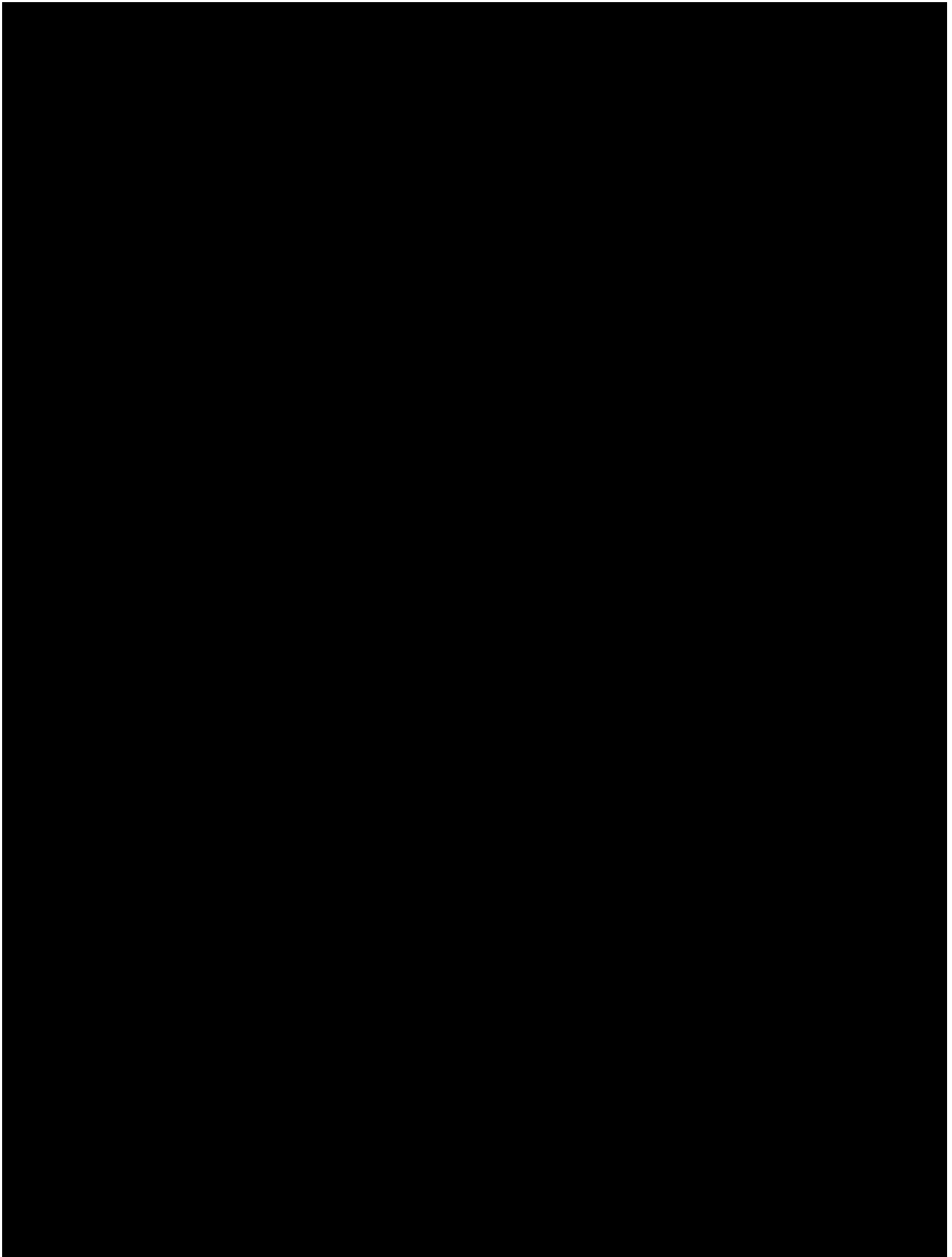
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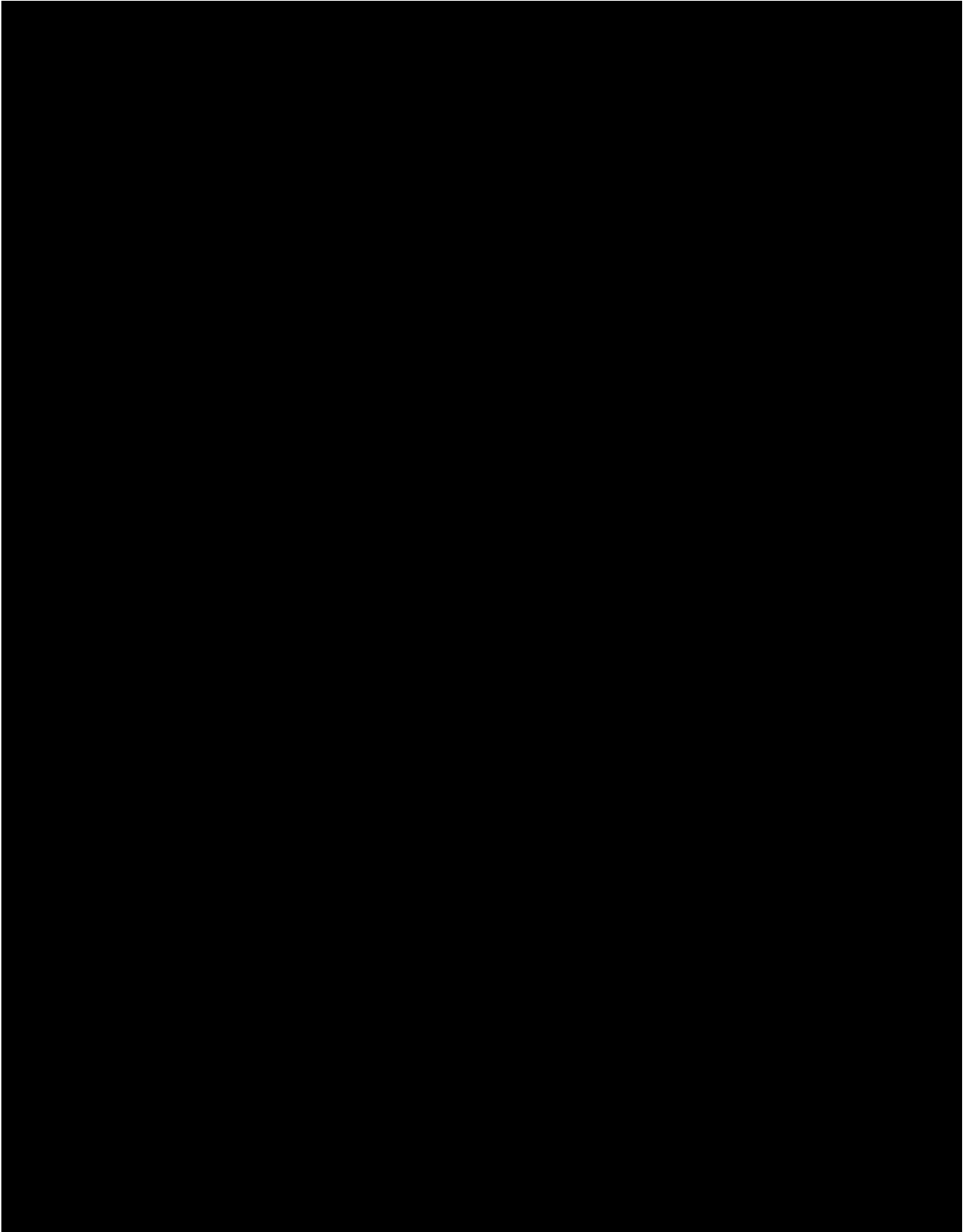
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CONFIDENTIAL – ATTORNEYS’ EYES ONLY

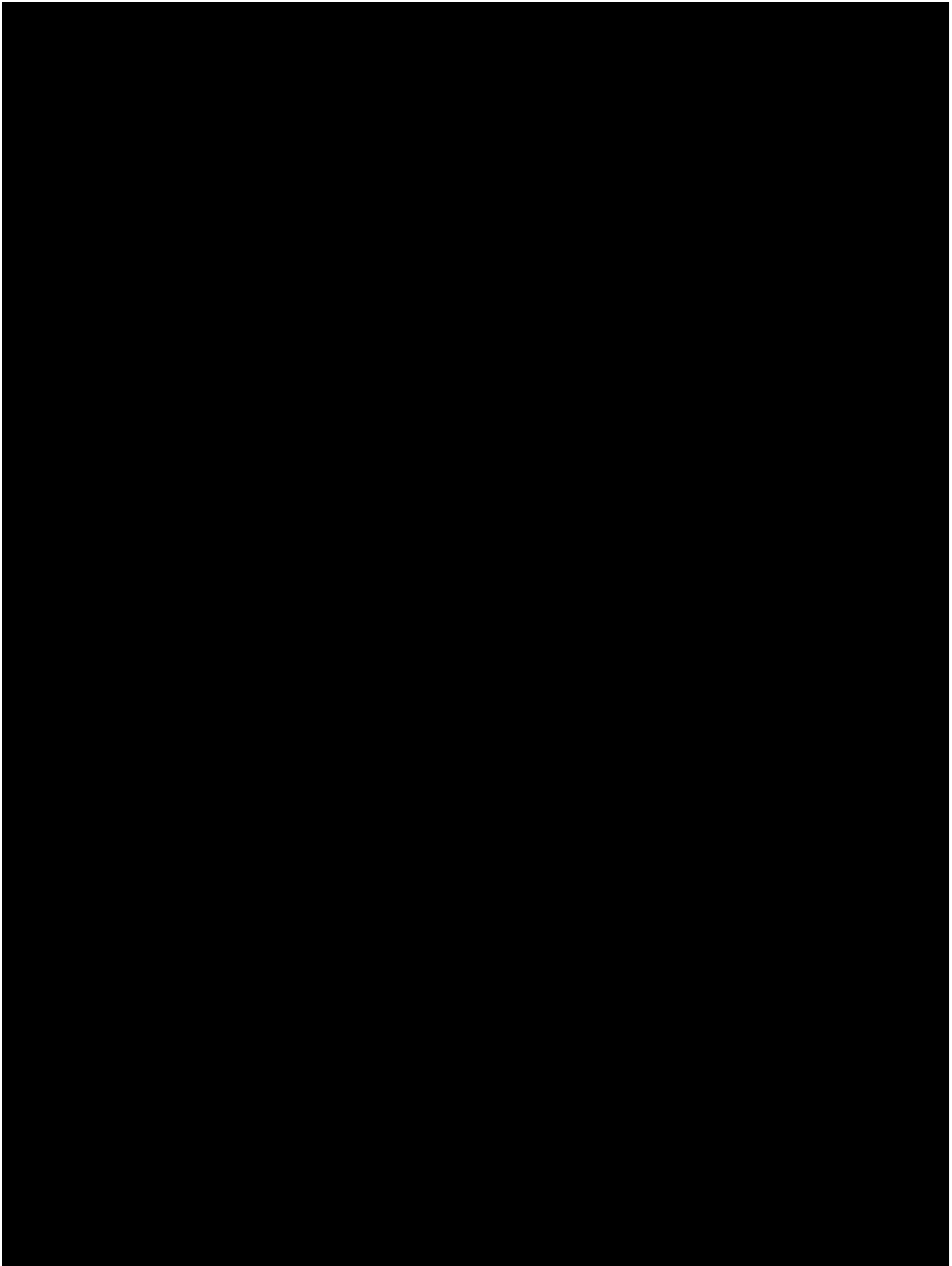


CONFIDENTIAL – ATTORNEYS’ EYES ONLY





CONFIDENTIAL – ATTORNEYS’ EYES ONLY



# **EXHIBIT 2**

**CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,

*Plaintiff,*

v.

MASIMO CORPORATION and  
SOUND UNITED, LLC,

*Defendants.*

C.A. No. 22-1377-MN-JLH

C.A. No. 22-1378-MN-JLH

**JURY TRIAL DEMANDED**

**CONFIDENTIAL –  
ATTORNEYS’ EYES ONLY**

MASIMO CORPORATION and  
CERCACOR LABORATORIES, INC.,

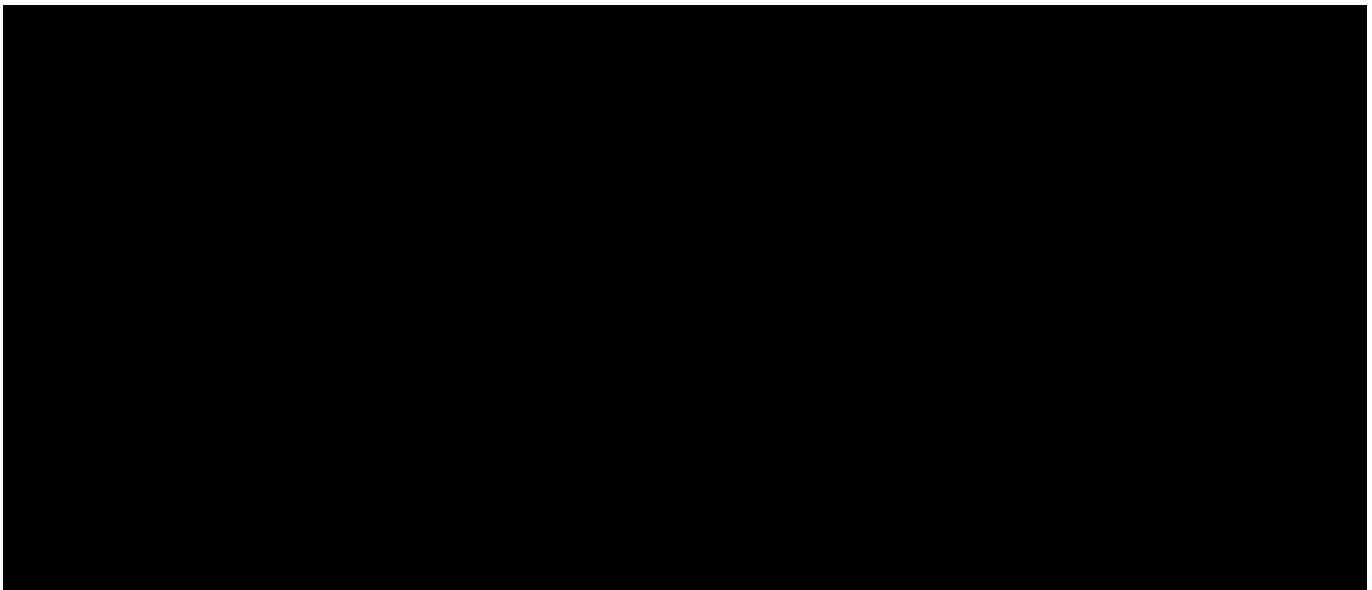
*Counter-Claimants,*

v.

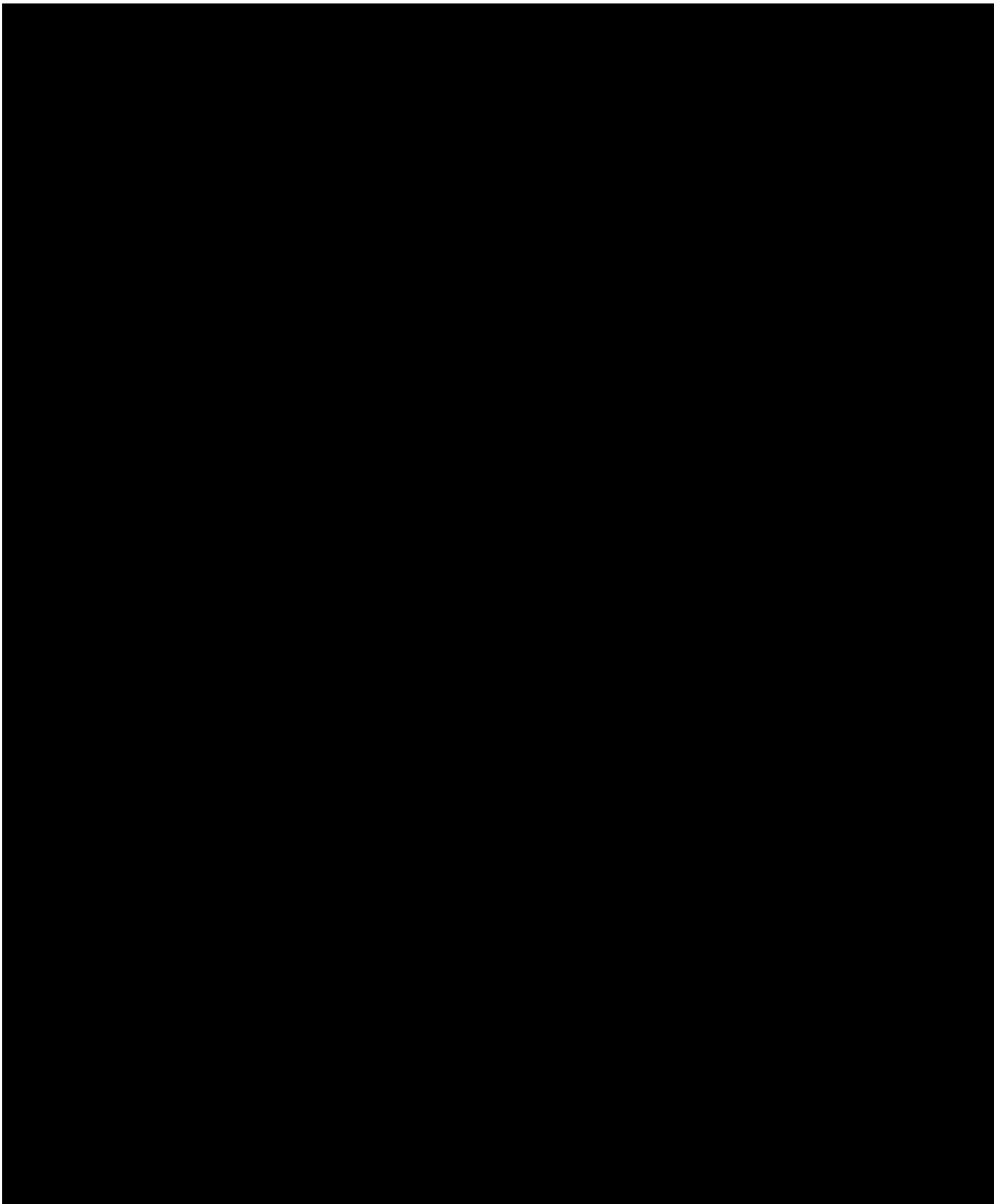
APPLE INC.

*Counter-Defendant.*

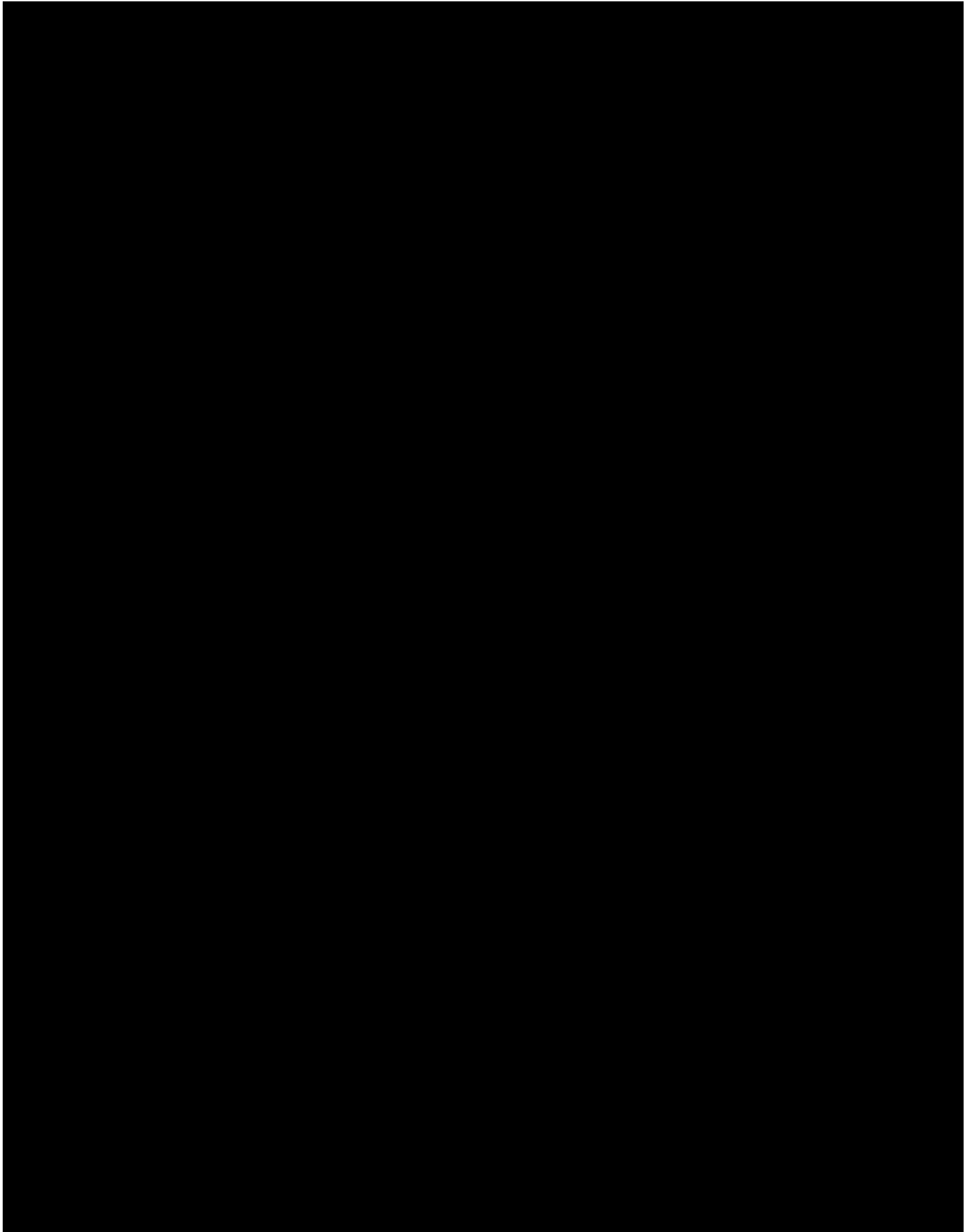
**PLAINTIFF APPLE INC.’S OBJECTIONS & RESPONSES TO DEFENDANTS’ AND  
COUNTERCLAIMANTS’ THIRD SET OF INTERROGATORIES (NOS. 19-23)**



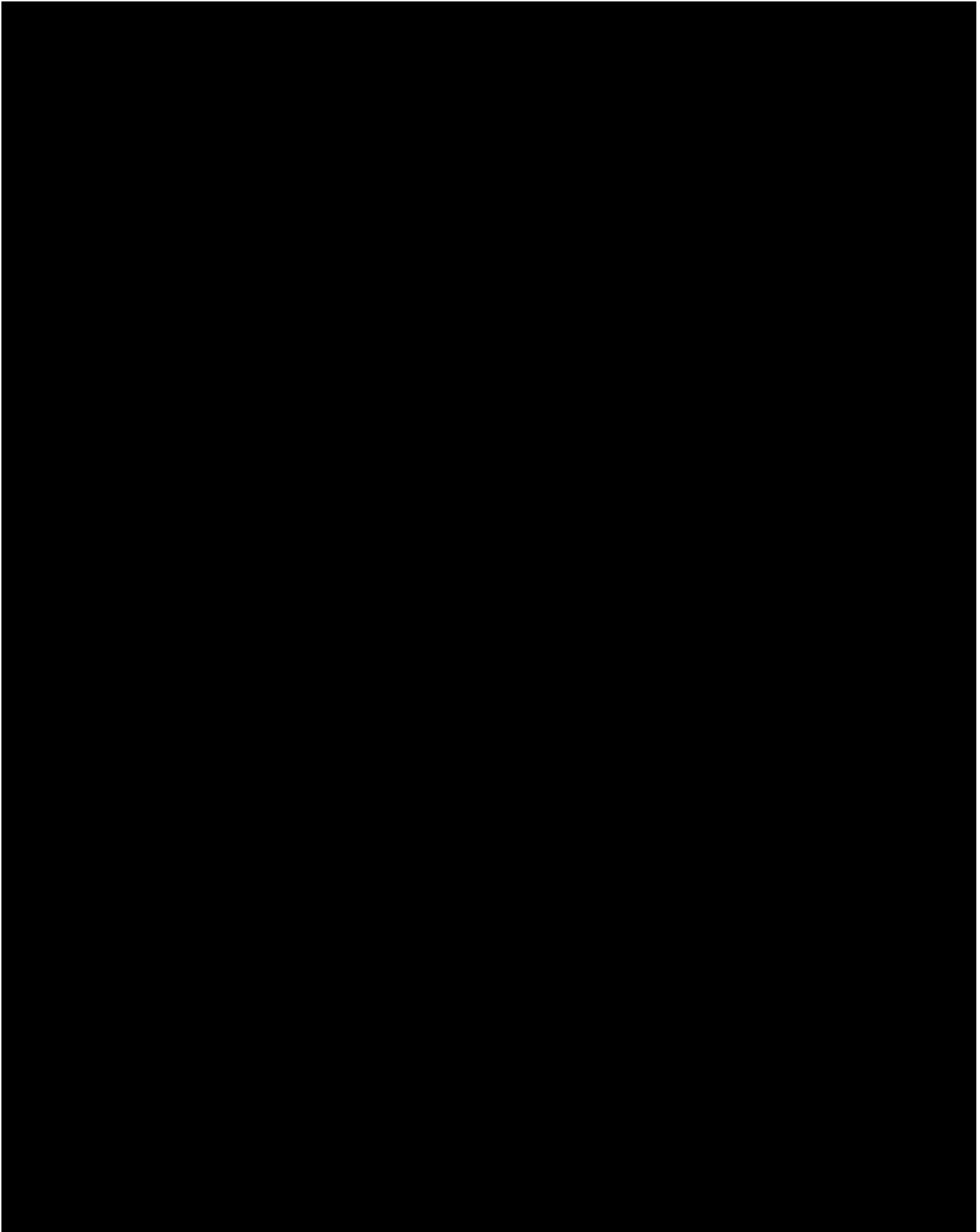
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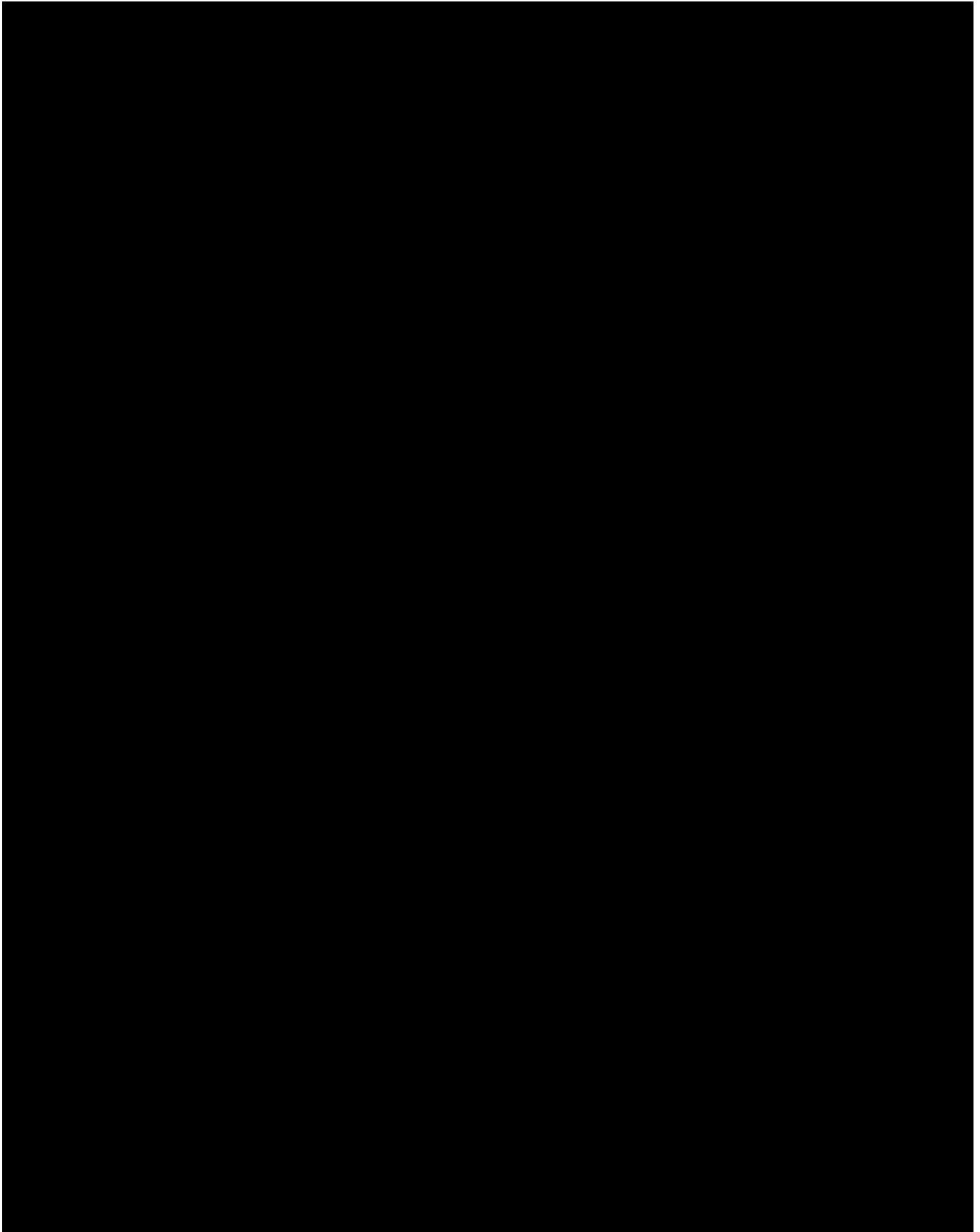
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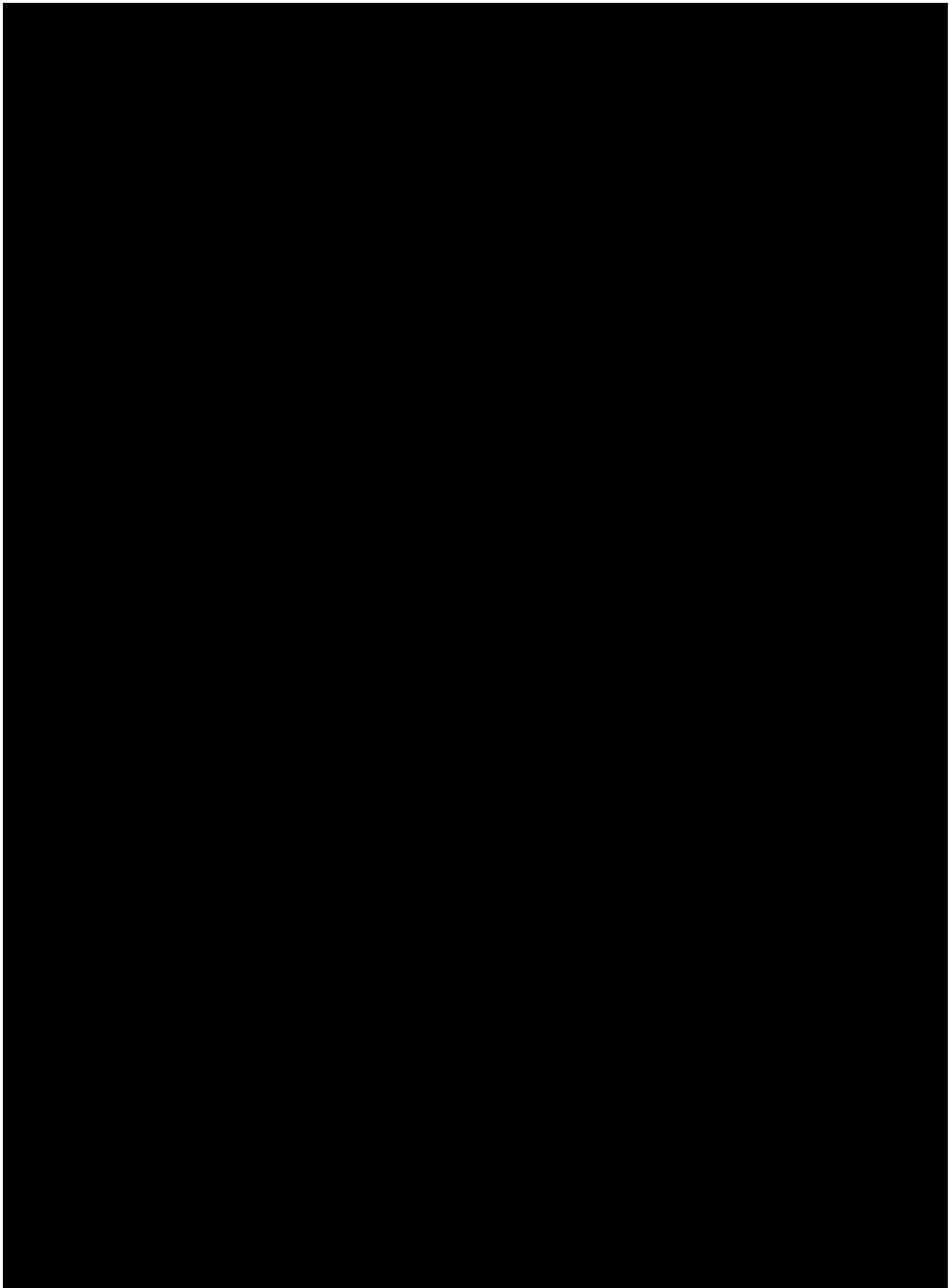
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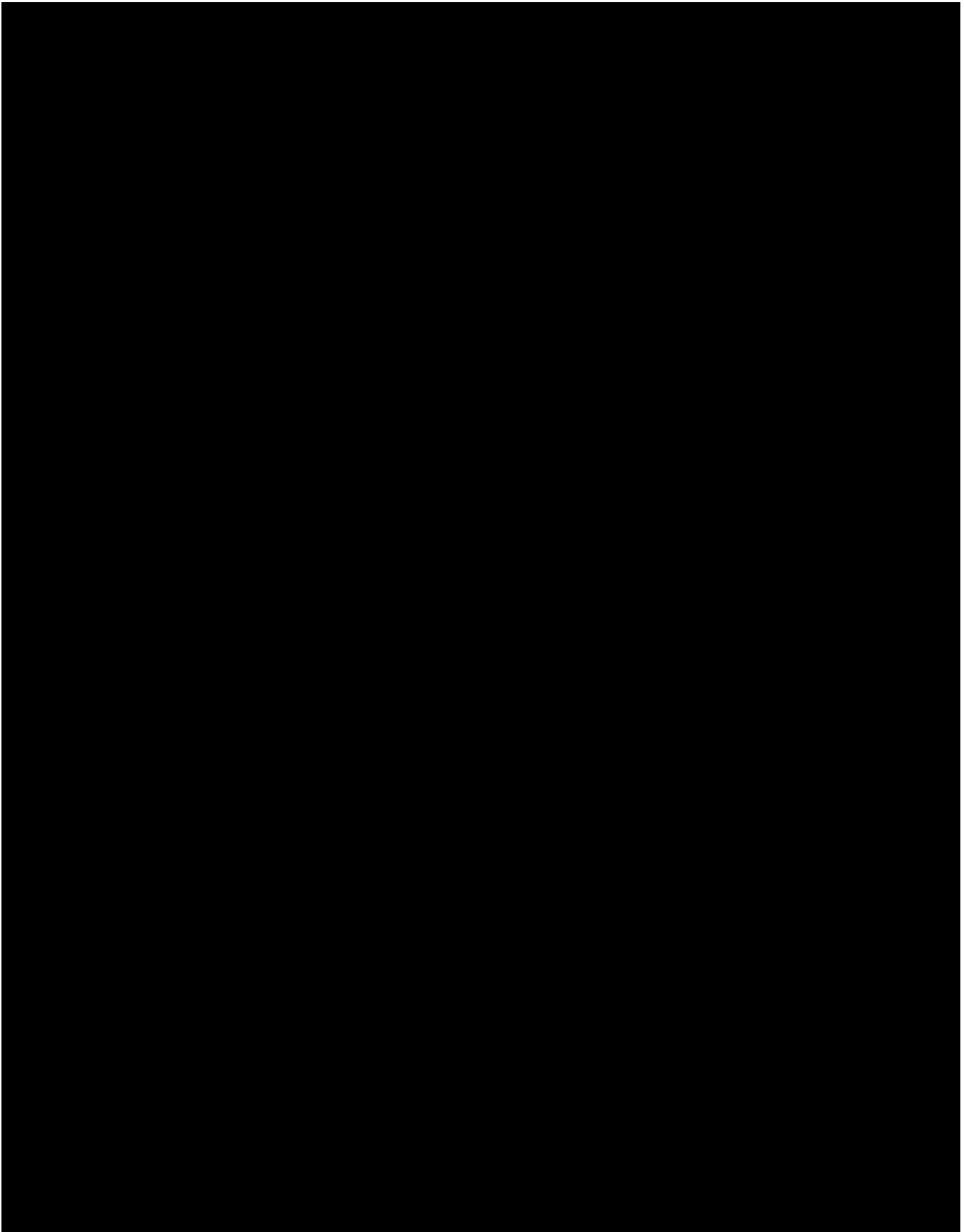


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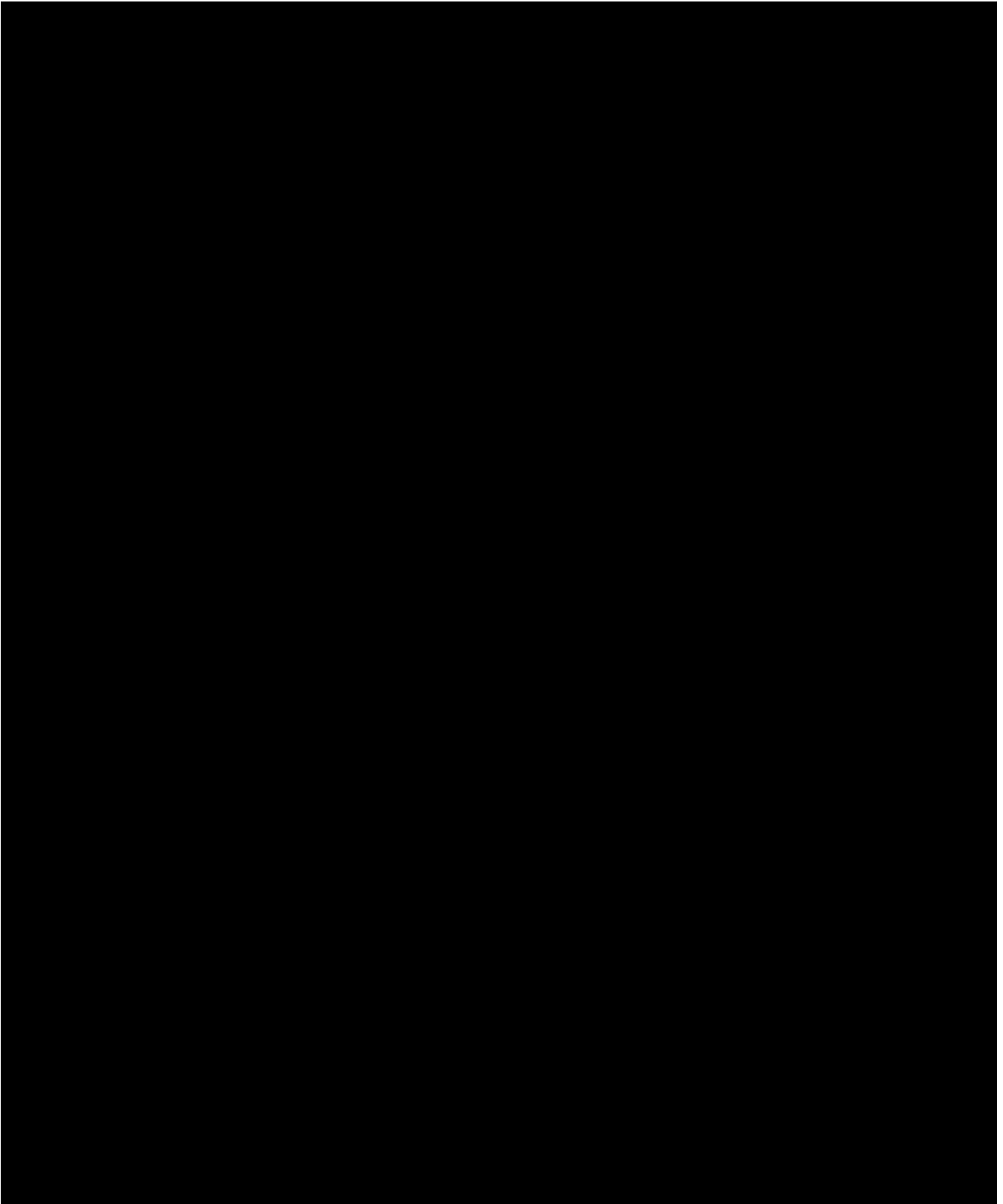




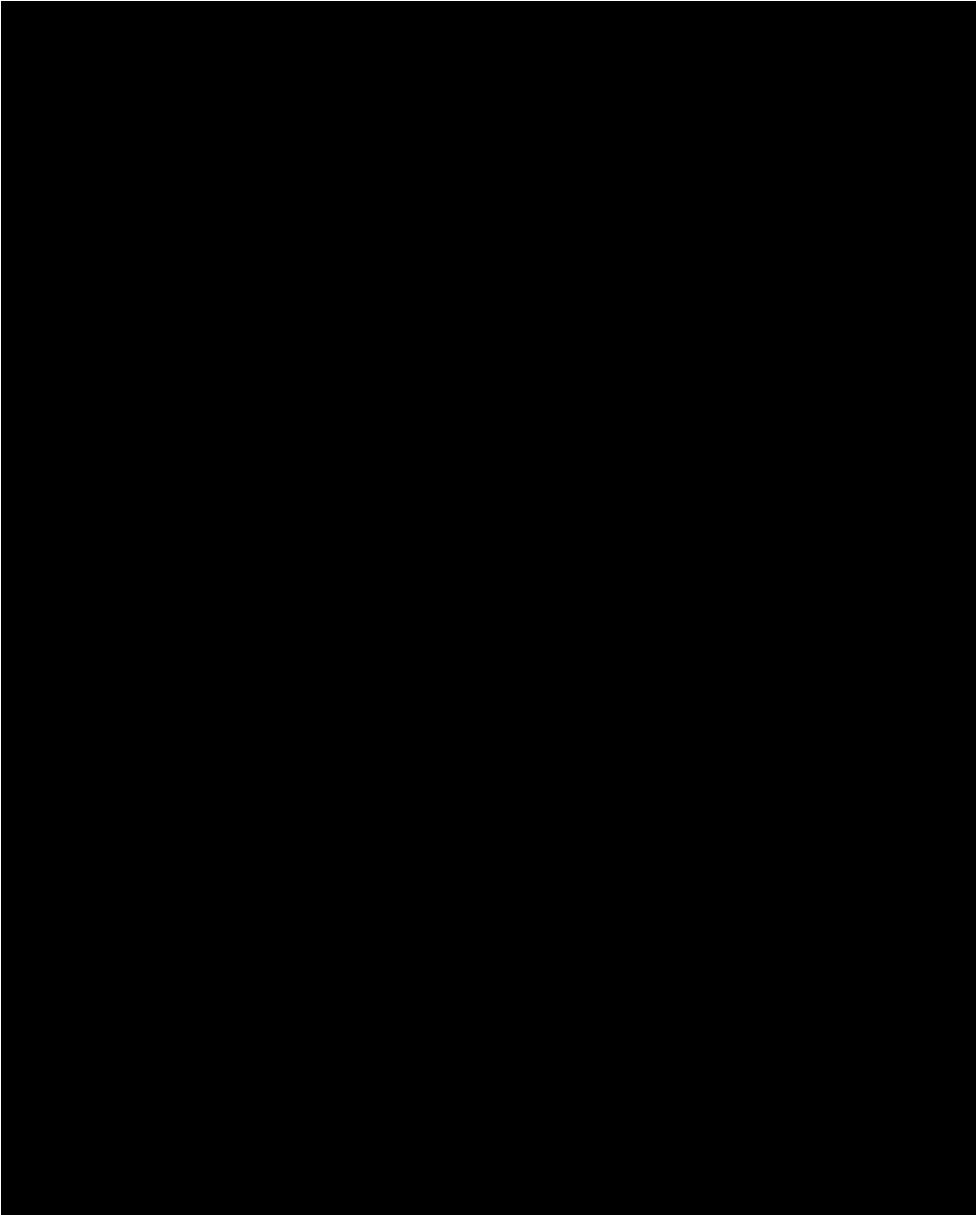
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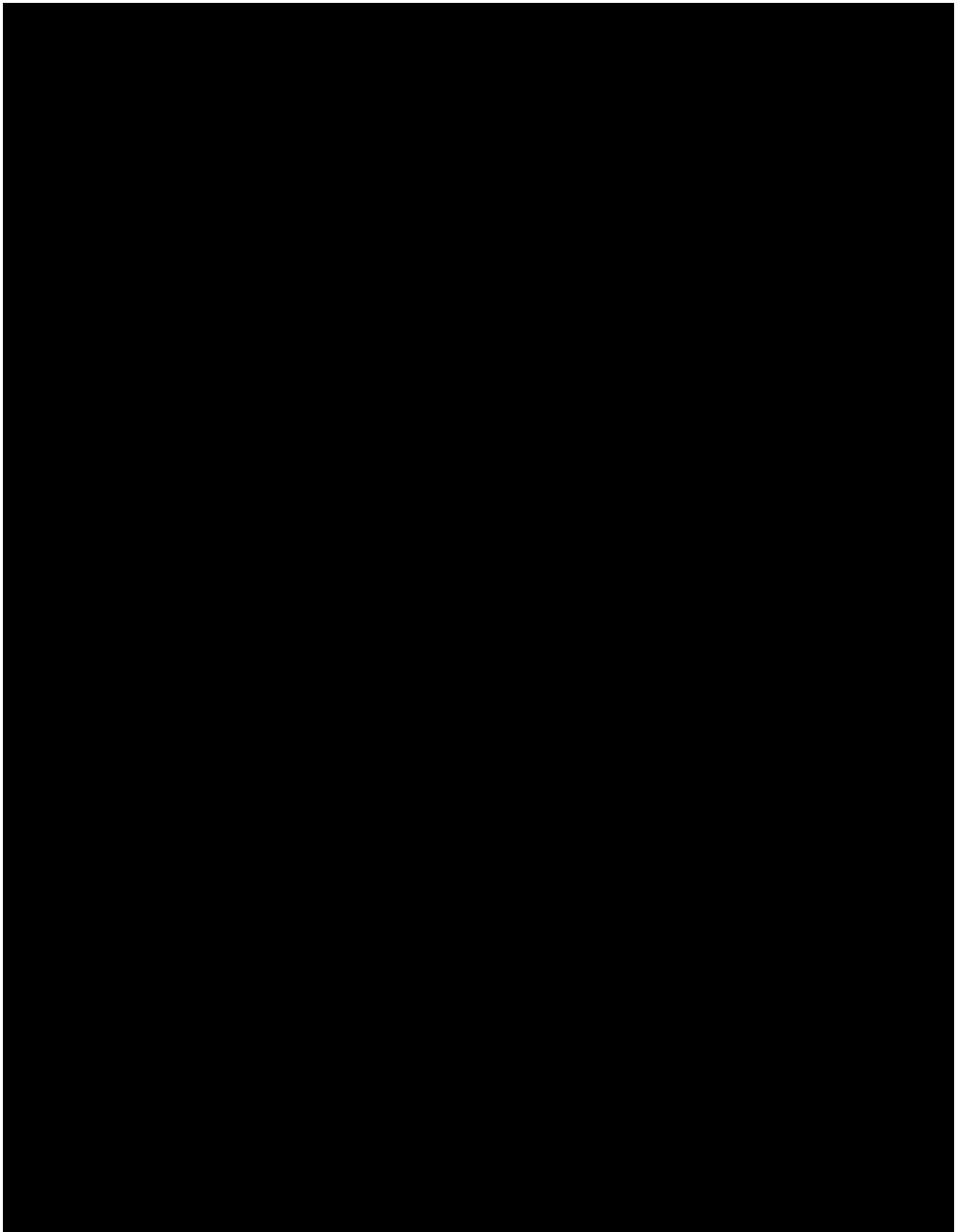
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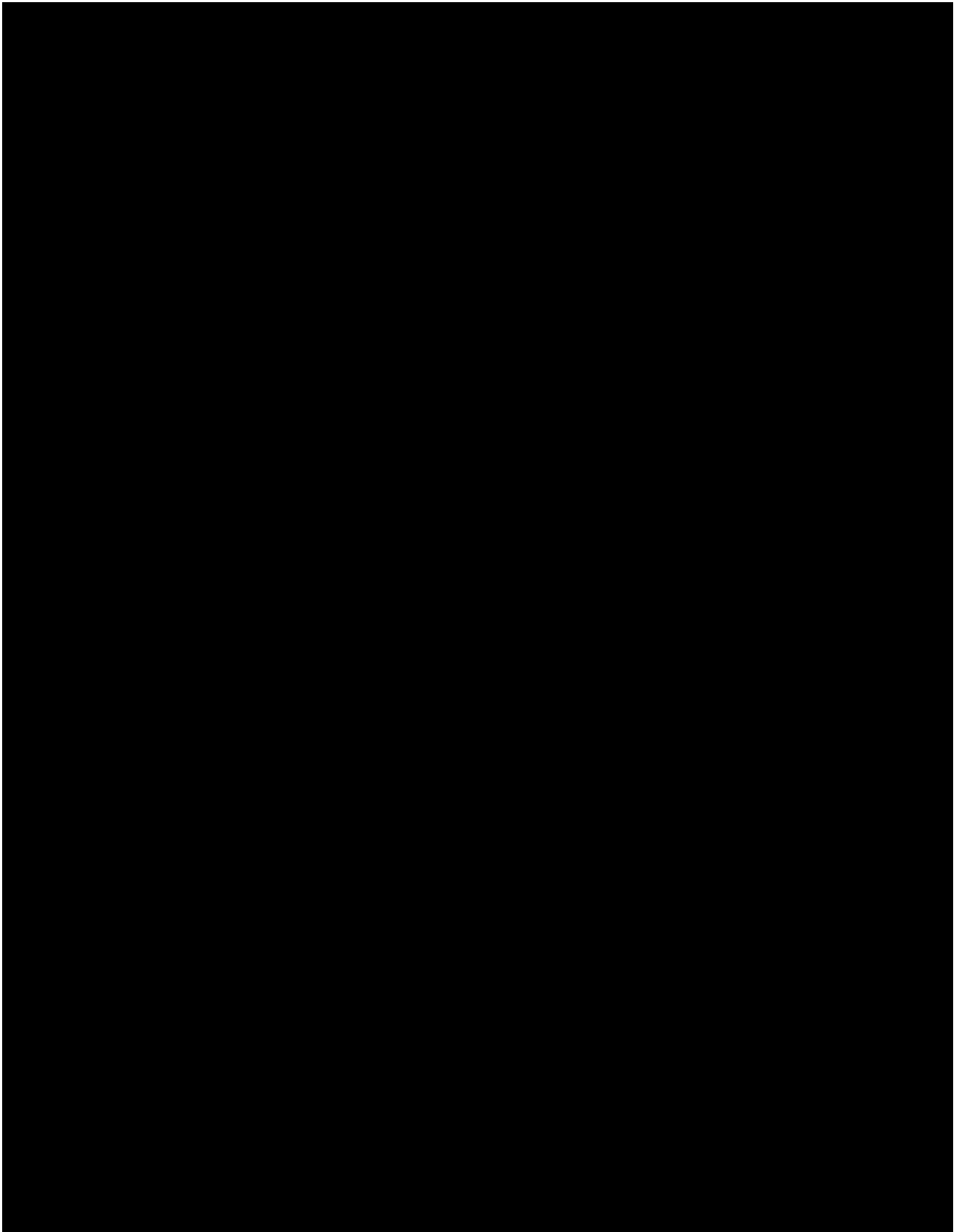
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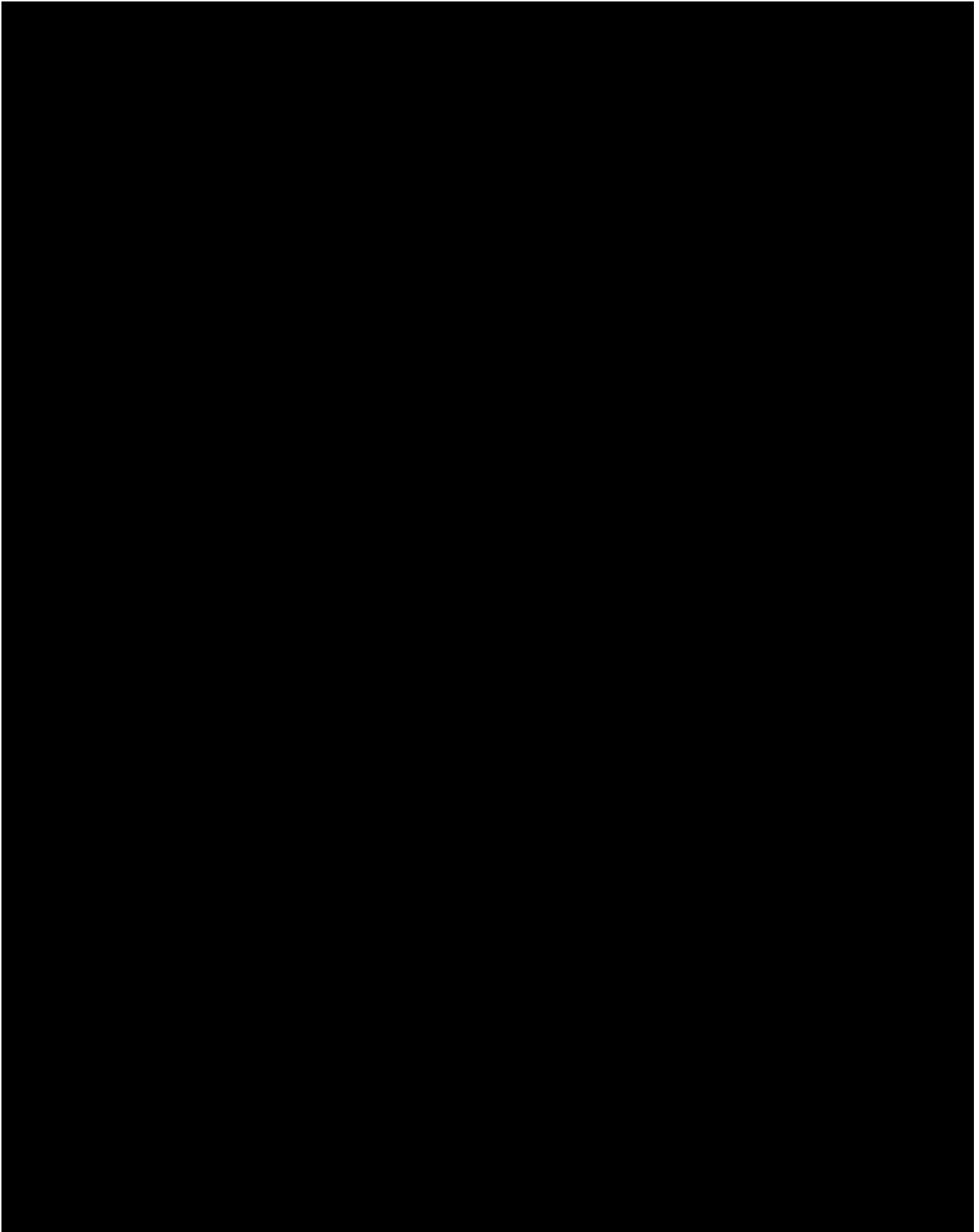
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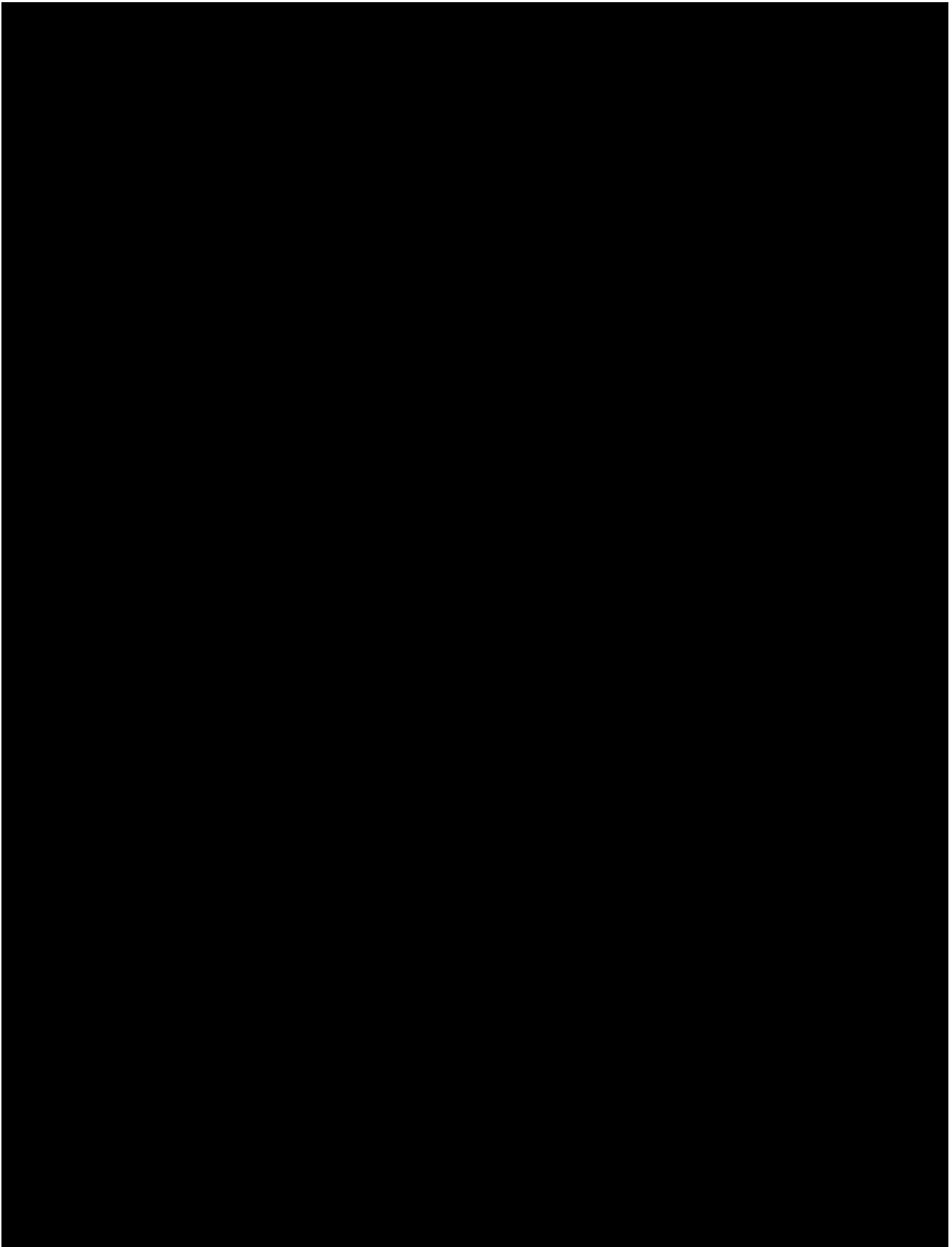
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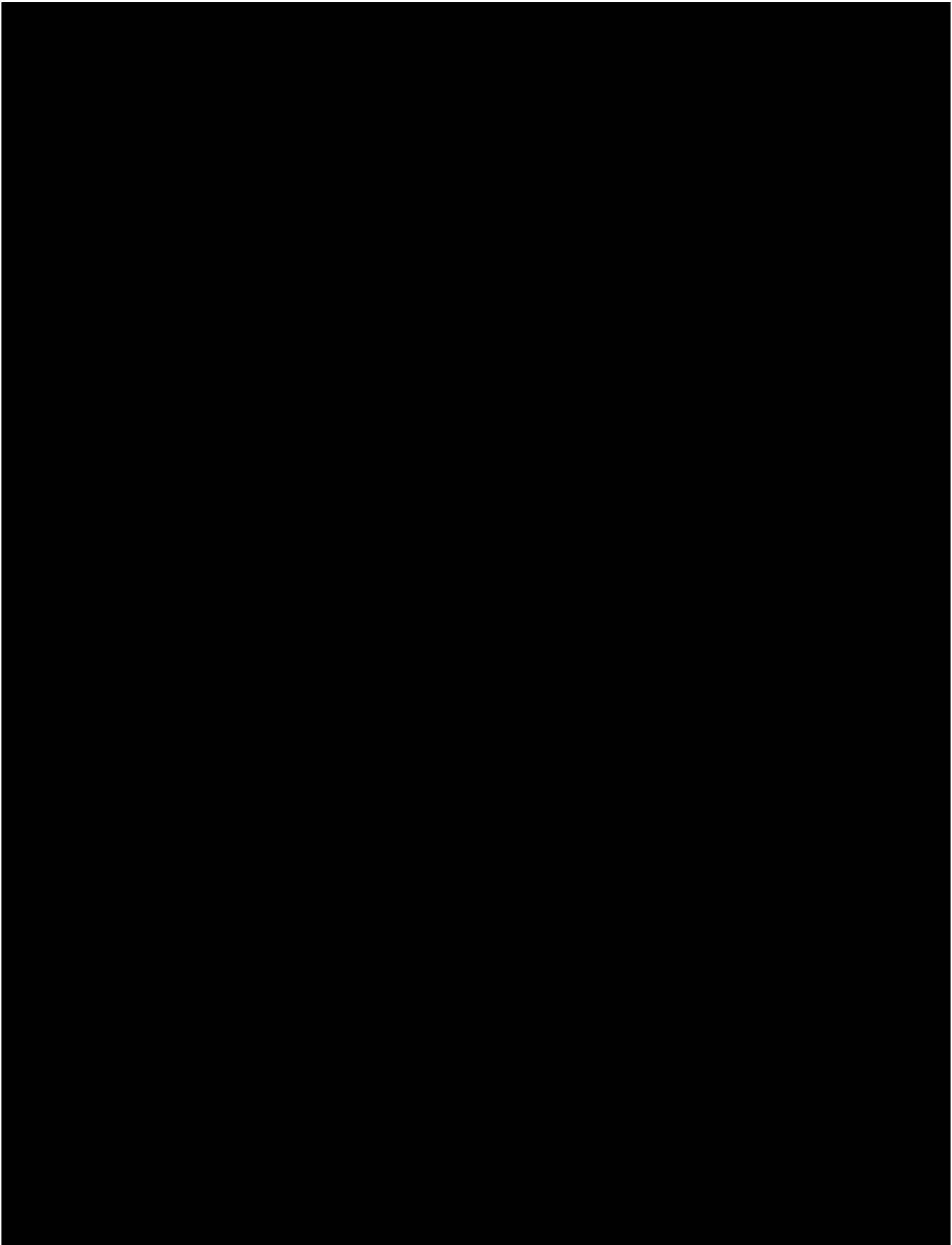
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**CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

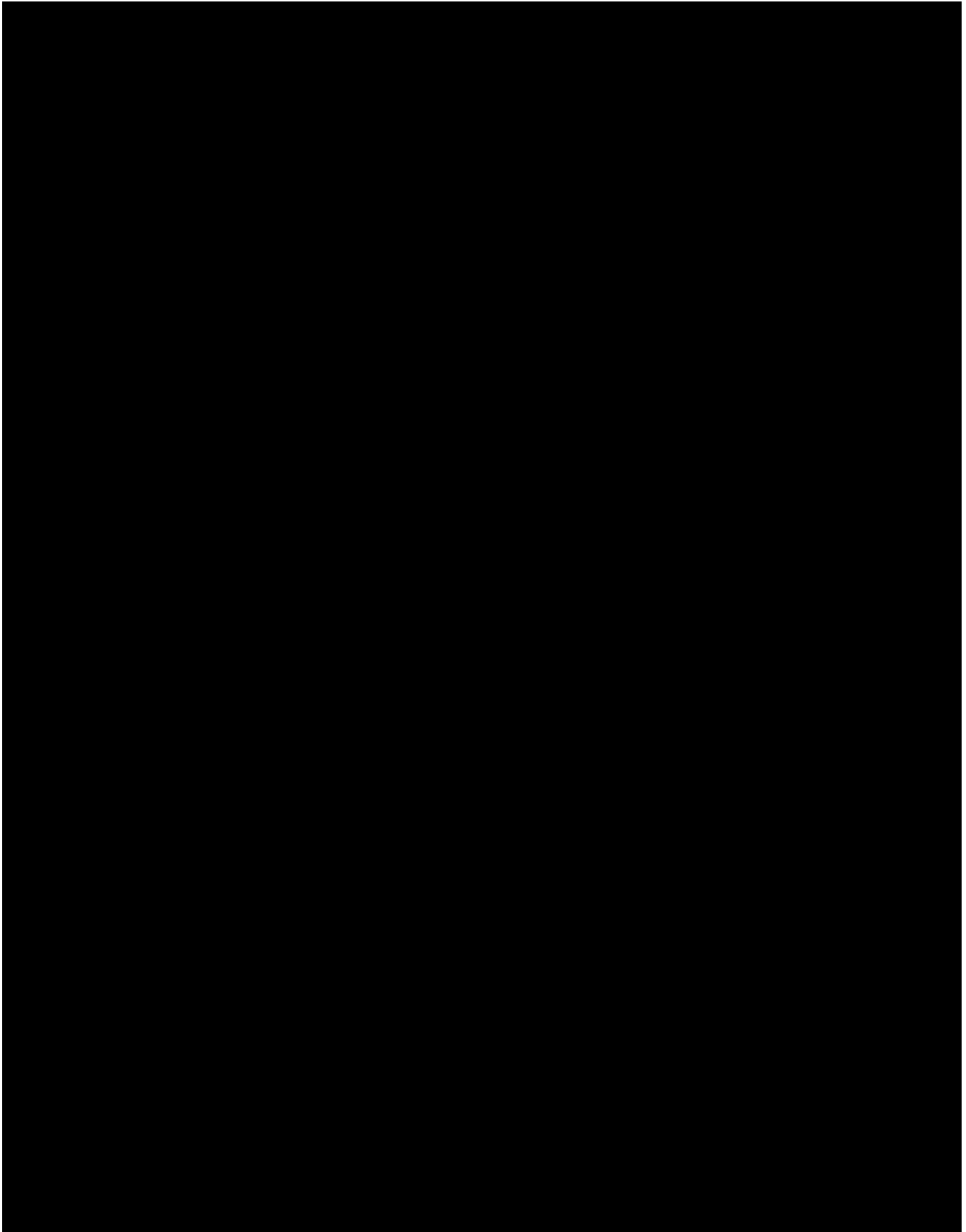


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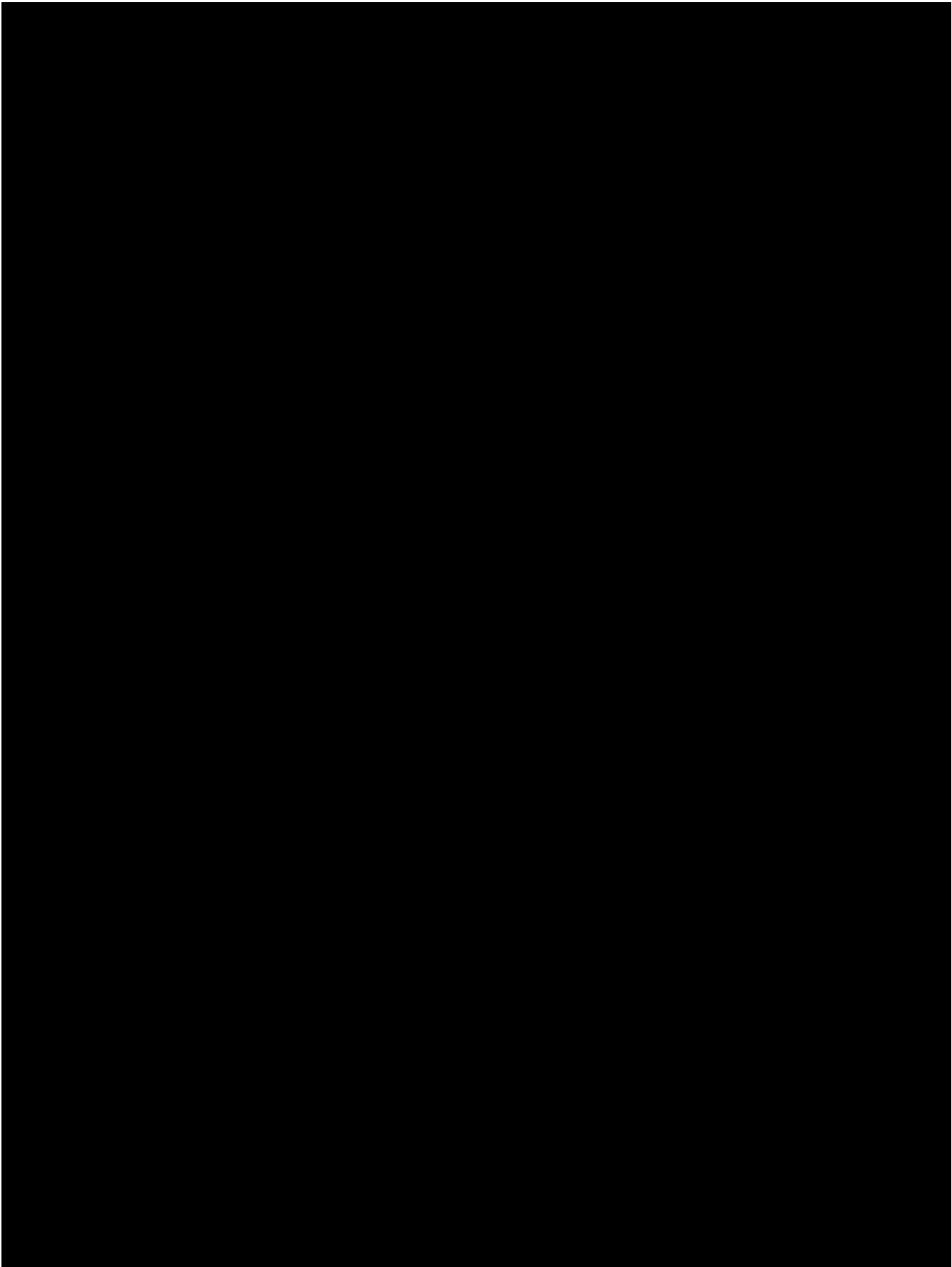




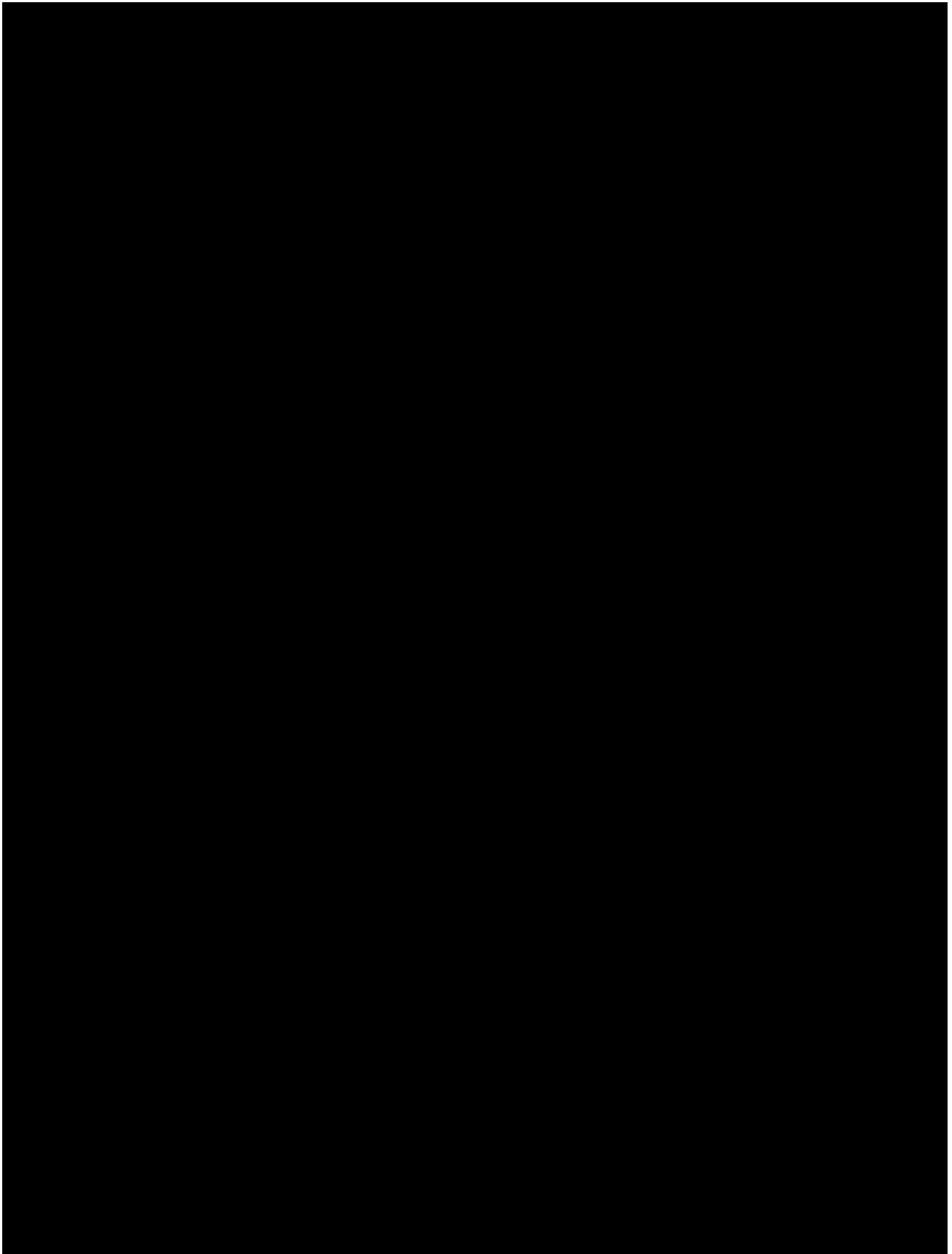
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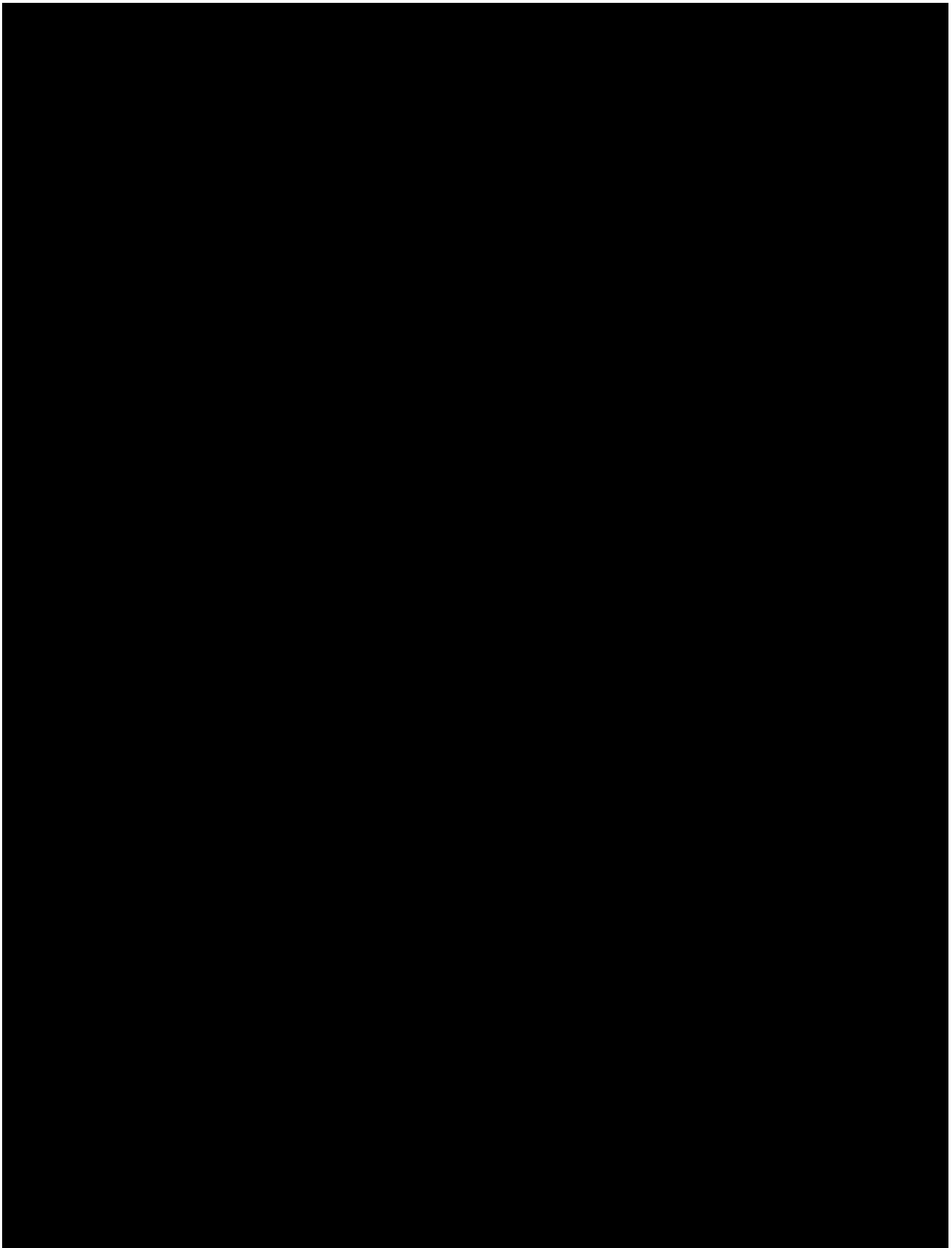
**CONFIDENTIAL – ATTORNEYS’ EYES ONLY**



**CONFIDENTIAL – ATTORNEYS’ EYES ONLY**



**CONFIDENTIAL – ATTORNEYS’ EYES ONLY**



# **EXHIBIT 3**



# **EXHIBIT 4**

WILMERHALE

July 21, 2023

Mark A. Ford

By E-mail

+1 617 526 6423 (t)  
+1 617 526 5000 (f)  
mark.ford@wilmerhale.com

Justin J. Gillett  
Knobbe, Martens, Olson & Bear, LLP  
2040 Main Street, 14th Floor  
Irvine, CA 92614  
Justin.Gillett@knobbe.com

Re: *Apple v. Masimo*, Civ. A. No. 22-1377, 22-1378 (D. Del.)

Dear Justin:

I write in response to your July 17th letter and the meet-and-confer with your colleagues on July 19, 2023. The purpose of this letter is to memorialize where the parties stand on certain issues discussed, and to determine whether we are at impasse on others.

I understand that with respect to Masimo's responses to Interrogatory Nos. 5, 7, and 10, Masimo's answers provide a complete statement of responsive information it has based on its inquiry to date, and that Masimo is not withholding any responsive contentions, evidence, or factual bases. While this leads us to question the basis for Masimo making these assertions in the first place, we agree there is no more to do in terms of these interrogatory responses as this point. We agreed that both sides will abide by their obligations under Fed. R. Civ. P. 26(e) to supplement these and similar interrogatory responses as responsive information becomes available during discovery and through further investigation.

With respect to Interrogatory No. 4, however, Masimo *currently has* further responsive information concerning its claimed litigation cost damages, so there is no basis to delay supplementation. Furthermore, those litigation cost calculations are based entirely on business records, and not any expert analysis. I understand that Masimo will produce records showing the amounts of litigation fees and costs it maintains it incurred as a result of Apple's assertion of the *Walker-Process*-challenged patents and Masimo's *inter partes* review petitions. We request that Masimo do so by **August 10, 2023** and supplement its response to Interrogatory No. 4 with at least the production number of the relevant documents, so that we have that information before depositions begin.

In addition, you indicated during the meet-and-confer that you would consider (1) whether Masimo was going to provide similar information for costs incurred as a result of the Politan Litigation, and (2) whether Masimo would provide a detailed summary of its methodology for determining litigation costs associated with the defense of the *Walker-Process*-challenged patents (including how attorneys and staff are instructed to allocate their work to the billing code associated with your treble damages claims). Please let us know by **Monday, July 24, 2023** whether you will



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agree to supplement with this information and whether you will provide that supplementation by **August 10, 2023**.

With respect to Interrogatory No. 12, our prior letter identified deficiencies in your initial response, and requested that Masimo supplement by “(1) identifying and describing all evidence in its possession showing that it lost sales as a result of the challenged advertising, including the evidence that formed Masimo’s good faith basis to bring the claim; and (2) detail, quantify, and explain all sales and marketing expenditures Masimo incurred that it would not have incurred but for the challenged advertising.” You responded in your July 17th letter that Masimo would supplement its response to Interrogatory No. 12, but Masimo would not commit during our meet-and-confer whether it would supplement with the information specifically requested in my letter and quoted above. It is unclear why Masimo refuses to be transparent about what it is agreeing to do. If there is a dispute about the scope of the supplement Apple requested in our July 11th letter, we should discuss, negotiate, and potentially present it to Judge Hall for resolution. As a result, unless you inform us otherwise by **Monday, July 24, 2023**, we will assume you are undertaking a good-faith, reasonably diligent effort to supplement with information responsive to what we requested in our July 11th letter and reserve all rights if Masimo does not do so.

Finally, your July 17th letter’s discussion of Interrogatory No. 6 and our meet-and-confer left us with even more serious questions concerning the propriety of Masimo’s continued pursuit of its monopoly leveraging theory. As you know, Masimo alleged that Apple “leveraged its power over iOS app distribution in an attempt to obtain confidential information from Masimo.” (D.I. 132 at ¶ 72). Interrogatory No. 6 asked Masimo to “[i]dentify and describe in detail each and every piece of ‘confidential information’ Masimo or Cercacor allegedly provided Apple” as a result of this alleged “leverage.” Your response described *every* piece of information Masimo or Cercacor conveyed to Apple over the course of the relevant App Store reviews. Some, if not all, of that information is readily available online, and it was at the time it was provided to Apple. For example, the first piece of information you claim was conveyed to Apple in your response—that the Radius PPG was 510(k) cleared (Response at 13)—was something Masimo publicly announced in a press release the year before.<sup>1</sup> While your response then goes on to explain how “Masimo’s product and FDA strategies” are information Masimo maintains as confidential, *id.* at 18, your response never states whether Masimo claims it provided Apple confidential information, what specific information is confidential, and how that specific information was kept confidential. We learned on the meet-and-confer yesterday that this obfuscation is intentional, because Masimo refuses to state, one way or another, whether any information provided to Apple was confidential. You now maintain that Masimo’s monopoly leveraging claim does not turn on whether any

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<sup>1</sup> Masimo Press Release (May 16, 2019) (“Masimo announced today FDA 510(k) clearance of Radius PPG.”), <https://investor.masimo.com/news/news-details/2019/Masimo-Announces-FDA-Clearance-of-Radius-PPGsupsup-the-First-Tetherless-SETsupsup-Pulse-Oximetry-Sensor-Solution/default.aspx>

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confidential information was provided at all to Apple. But regardless of how Masimo now describes its claim, the interrogatory requested that Masimo identify the precise pieces of “confidential information” provided to Apple. Frankly, only a minimal amount of information was provided to Apple (as your response shows), and it has been months and in some cases years since that information was sent. If Masimo remains unable to say one way or the other that the precise information provided was something it maintains as a confidential business secret, that itself speaks volumes.

Especially because Masimo is pressing for a massive volume of discovery based on these questionable allegations, we ask that by **Friday, July 28, 2023**, Masimo supplement its response to Interrogatory No. 6 by (1) quoting any statements made by Masimo or Cercacor to Apple in the context of SafetyNet, Ember, or Masimo Health review that Masimo maintains constitutes confidential business information, and (2) describing with particularity any document Masimo provided Apple that Masimo contends constitutes confidential information. If Masimo does not contend that any information provided to Apple over the course of these three reviews was confidential, it should state so clearly. If Masimo will not agree to make this supplement, we intend to bring this issue before Judge Hall immediately. Accordingly, please let us know by close of business **Monday, July 24, 2023** whether Masimo will agree to provide this supplement. Otherwise, Apple will move to compel.

Best regards,

*/s/ Mark A. Ford*

Mark A. Ford

# **EXHIBIT 5**

# Knobbe Martens

---

KNOBBE, MARTENS, OLSON & BEAR, LLP

2040 Main St., 14th Fl., Irvine, CA 92614  
T (949) 760-0404

Justin Gillett  
Justin.Gillett@knobbe.com

July 17, 2023

**VIA EMAIL**

Mark Ford  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, MA 02109

Re: *Apple v. Masimo*, Civil Action No. 22-1377; 22-1378

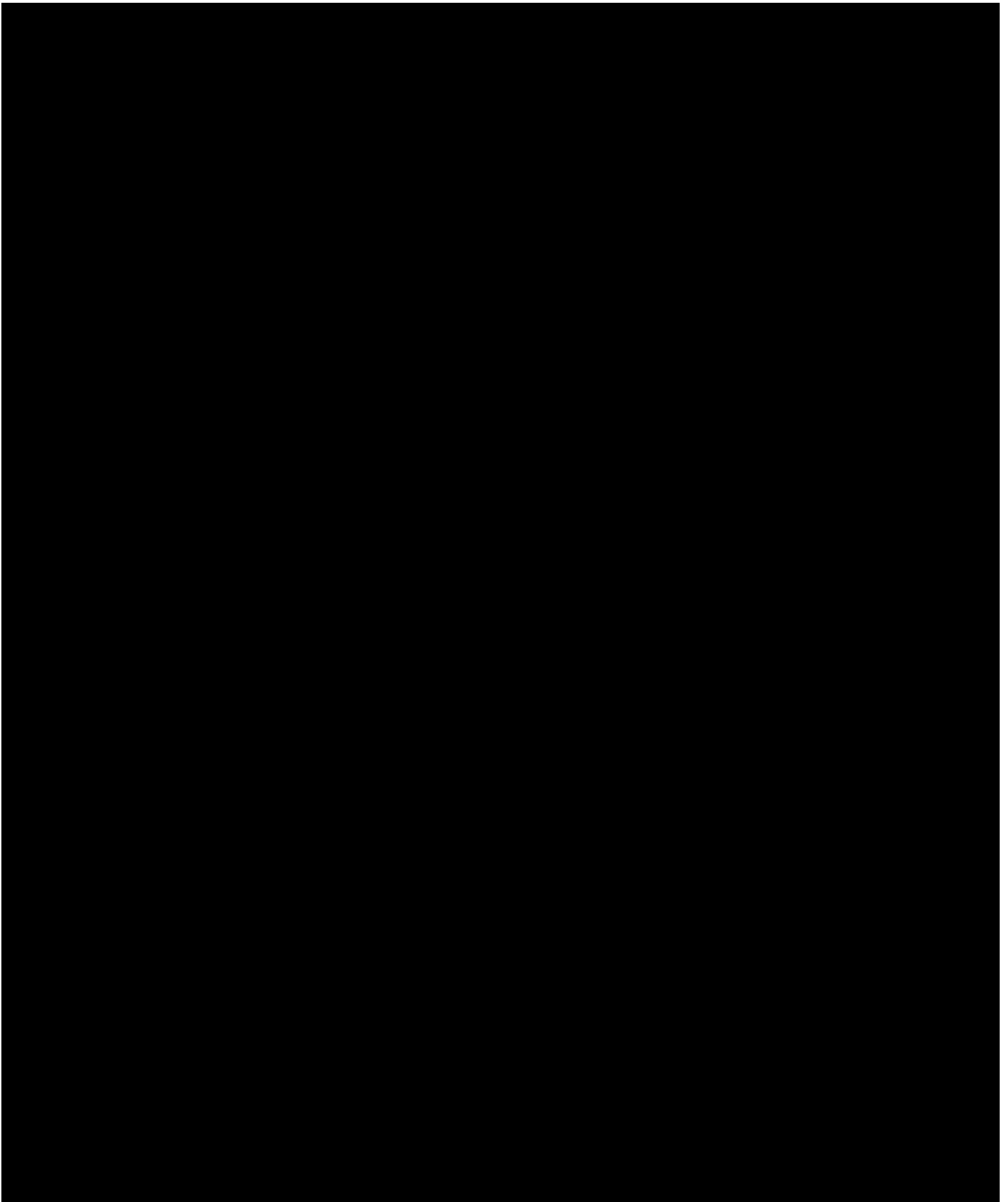
Dear Mark:

I write in response to your July 11, 2023, letter regarding Apple's second set of interrogatories (nos. 4-14). We are available to confer on Wednesday, July 19 at 10:00 a.m. or 2:00 p.m. Pacific.

**Knobbe Martens**

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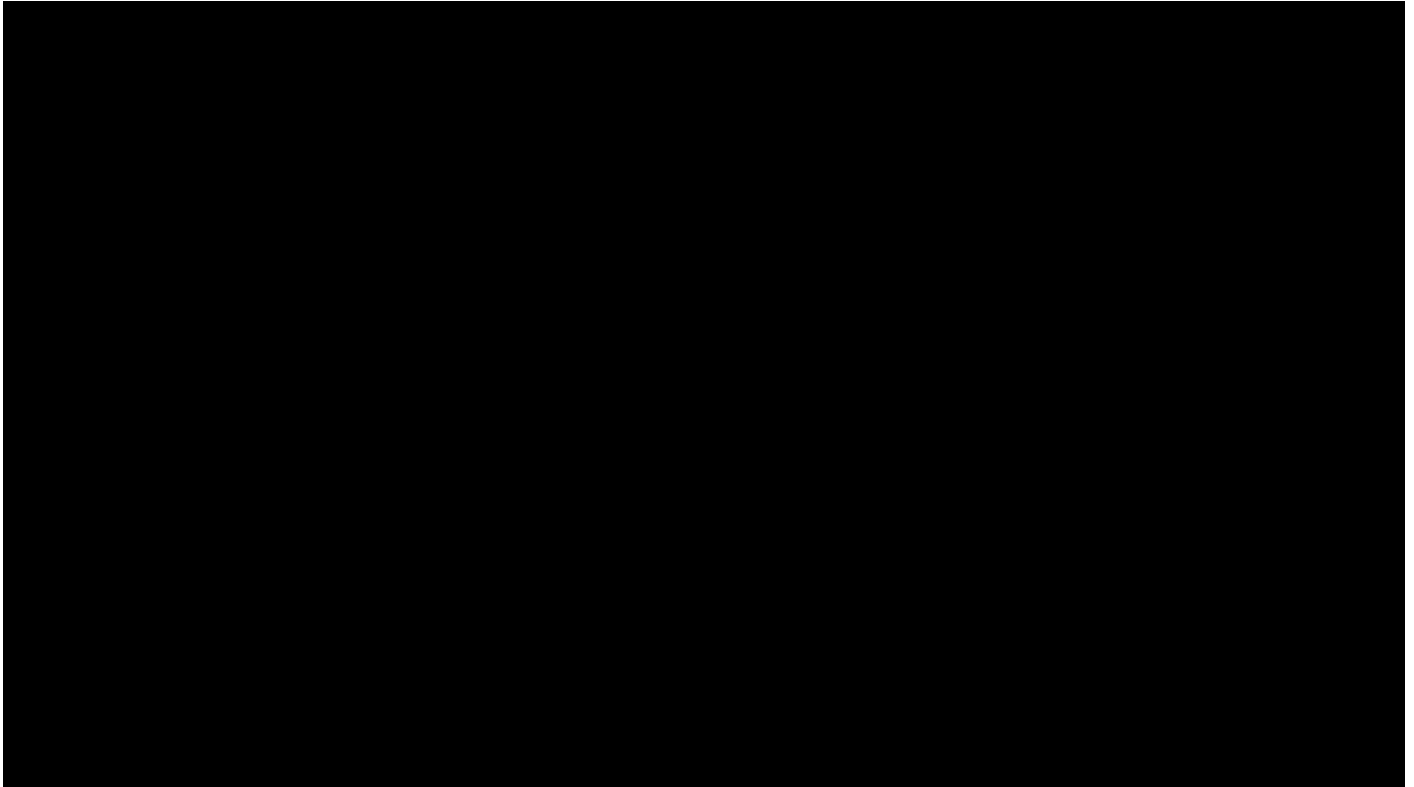
Mark Ford  
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**Knobbe Martens**

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Mark Ford  
Page 3



Best regards,

A handwritten signature in cursive script, appearing to read "Justin J. Gillett".

Justin J. Gillett

# EXHIBIT E

WILMERHALE

July 12, 2023

Mark A. Ford

By E-mail

+1 617 526 6423 (t)  
+1 617 526 5000 (f)  
mark.ford@wilmerhale.com

Justin J. Gillett  
Knobbe, Martens, Olson & Bear, LLP  
2040 Main Street, 14th Floor  
Irvine, CA 92614  
Justin.Gillett@knobbe.com

Re: *Apple v. Masimo*, Civ. A. No. 22-1377, 22-1378 (D. Del.)

Dear Justin:

I write in response to your July 8th letter to correct and clarify mischaracterizations made about Apple's position with respect to several of Masimo's requests for production ("RFPs"), and to address various omissions as well. I also outline proposed compromises that we can discuss during our scheduled meet-and-confer later today. Finally, I address Masimo's position regarding certain RFPs that Apple has served.

**I. Apple's Positions Regarding Masimo RFPs**

**A. Discovery Concerning Masimo's Monopoly Leveraging (App Store) Theories And "Predatory Infringement"**

While Judge Hall recommended denial of Apple's motion to dismiss, she held only that Masimo's *Walker Process* theory was viable. She expressly "questioned" the viability of Masimo's monopoly leveraging and "predatory infringement" theories of antitrust liability, and specifically indicated that she would permit discovery only if it were proportional to a "viable" theory. For that reason, Apple will maintain that the Court should not compel discovery on these theories, let alone the sweeping, overly broad, and unduly burdensome discovery Masimo seeks.

Your letter also ignores the many other bases we articulated for resisting discovery on these topics – not least of which is Masimo's own admission that Apple did not, in fact, refuse the Masimo Health App. While we question the propriety of Masimo continuing to press a knowingly false "refusal to deal" claim, we certainly do not believe the claim warrants boundless discovery into Apple's App Store business. Moreover, Masimo's requests relating to the invalid theories are so broad as to seek discovery into alleged injuries to third parties, who are not even participants in the so-called "health watch market," and into *any claim* by *any party* that Apple has infringed or otherwise misappropriated technologies. Masimo has no standing to litigate such claims even if they were based on legitimate antitrust theories.



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Next, Judge Hall never “observed” that the requests at issue were relevant to Apple’s “predatory intent” for purposes of Masimo’s attempted monopolization claim. She simply asked a question during the hearing on the motion to dismiss. It is inappropriate for Masimo to infer any sort of holding about the scope of discovery from that question into Judge Hall’s subsequent R&R. Nevertheless, I responded to this argument during the meet-and-confer, and we are prepared to address it before Judge Hall.

Similarly, the argument that Masimo’s sweeping discovery into “predatory” infringement is somehow relevant to whether Apple willfully infringed the Masimo patents at issue, let alone proportional to the issues in this case, is meritless, especially given the cross-use of C.D. Cal. discovery. Apple has not refused to produce documents regarding Apple’s culture and practices regarding respect for IP rights generally. Instead, Apple is refusing to produce irrelevant documents regarding communications with third parties (e.g., RFPs 84, 89-90), specific decisions regarding irrelevant third-party IP (e.g., RFP 85), and additional documents regarding issues that have been thoroughly explored in the C.D. Cal. case (e.g., RFPs 86-87).

Accordingly, we stand on our objections to RFPs 62-63, 83-90. For the same reasons, Apple declines to make any production in response to RFP 80 (concerning Masimo’s FDA strategies), which you explained is also directed to Masimo’s monopoly leveraging claim. In addition, based on Masimo’s admission that it did not provide any confidential information to Apple as part of the App Store review, RFP 80 constitutes an improper fishing expedition.

With respect to RFPs 76-79 and 81-82, for which Apple initially offered to produce a narrow scope of documents pertaining to the review of the Masimo and Cercacor apps mentioned in the Counterclaims, Apple will follow through on its agreement to produce this narrow scope without prejudice to its position that the requested discovery is not relevant to any viable theory. Apple has not “withdrawn” any prior agreement to produce documents.

## **B. Geographic Scope**

We confirm that –for purposes of this litigation–Apple will not contest that the relevant geographic market is the United States. As a result, Masimo agreed it will not pursue RFPs 57-61 and accepts the narrowing of the geographic scope for RFPs 53, 66-69, and 71 to the United States.

## **C. Patent-Related Discovery Requests**

With respect to RFPs 74-75 (Apple’s IP policies and enforcement) and RFP 92 (documents relating to Apple’s decision to assert the *Walker Process*-challenged patents), Apple agrees to conduct a reasonably diligent search for non-privileged responsive documents within its possession, custody, and control.

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**D. “Ecosystem” Discovery**

With respect to RFPs 112-114, Apple is willing to undertake a reasonably diligent search for documents that discuss whether and how any so-called “ecosystem” of Apple products relates to the Apple Watch. Indeed, as indicated in Apple’s objections and responses, such documents would already be covered by other requests to which Apple has agreed to produce documents, including, for instance, RFPs 51, 56, 99, and 105. Masimo’s requests for all documents related to any “ecosystem” on any Apple users and product lines – including products not at issue in this case – are overbroad, unduly burdensome, and not proportional.

**E. Duplicative Discovery**

As explained on our call, Apple qualifies that Masimo’s discovery requests should not be “duplicative of discovery subject to the parties’ cross-use agreement and the Court’s oral order regarding permissible cross use” in three ways.

First, Apple reserves the right to de-dupe documents against those already produced. Masimo wants to ensure that documents are only deduped if the metadata (including custodian data) are identical, and Apple is investigating the implications of that demand.

Second, to the extent that Apple has already completed a reasonably diligent search for a category of documents for a case subject to cross-use, it is unduly burdensome to require Apple to engage in the same search. This does not mean Apple refuses to update production categories where it has agreed to do so through its RFP responses.

Third, with respect to Masimo’s claims that Apple engaged in so-called “Sherlocking” and “efficient infringement,” discovery into those issues is complete by virtue of what was done in the C.D. Cal. litigation. Anything more would be unnecessarily cumulative. For the reasons discussed above, however, Apple believes these topics are irrelevant to any viable theory in this case.

**II. Masimo’s Positions Regarding Apple RFPs**

**A. Litigation Cost Discovery**

We understand Masimo intends only to produce a spreadsheet of costs it unilaterally deems to be a result of Apple’s assertion of the *Walker Process*-challenged patents, without any description of the work performed or any discovery into Masimo’s various fee arrangements. Masimo claims it has established a billing code associated with the defense of those *Walker Process*-challenged patents and related IPR claims, but Masimo’s proposal provides Apple’s attorneys and experts no basis by which to challenge Masimo’s asserted calculation of antitrust damages. Nor would Masimo’s proposal provide any basis to segregate the alleged costs among the *Walker Process*-challenged patents, as would be necessary, for instance, if Masimo’s claims are rejected in part.

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Despite this, we understand Masimo intends to seek those costs as treble damages, and also contends that those costs resulted in other consequential harms to the company, including impairing its ability to compete.

We do not believe it is appropriate for Masimo to put its litigation costs at issue and simultaneously selectively withhold all ordinary course documents that would permit Apple to test Masimo's claimed costs through fact and expert discovery. Accordingly, unless Masimo offers additional discovery, Apple intends to move to compel production of documents in response to RFPs 61-62, 64-65, and 77-78.

In addition, Apple maintains that documents responsive to RFP 76 are necessary to test any claim regarding the financial impact of those alleged litigation costs. Please confirm that Masimo will produce the requested financials.

**B. Documents Concerning Sound United Acquisition**

Masimo indicated that it may be willing to produce documents concerning the Sound United acquisition that relate to the transaction's impact on sales of Masimo Watch Products, market share for Masimo Watch Products, and Masimo's goals and strategies concerning Masimo Watch Products. Subject to Masimo's confirmation, that would resolve Apple's inquiries regarding RFP 88.

**C. Documents Concerning Customer/Distributor Relationships**

Masimo took the position that documents concerning sales strategies and plans with respect to specific customers and distributors would not fall within the scope of RFP 89, which seeks all documents concerning relationships with those customers or distributors. Putting that dispute aside, such documents fall within the scope of RFP 80 (all documents concerning sales plans and strategies for any Masimo Watch Product), and Masimo has agreed to produce all documents responsive to RFP 80 that it locates through its reasonably diligent search.

**III. Issues Concerning Both Parties' Productions**

**A. Sales Data**

As to Masimo RFP 72 and Apple RFP 67, the parties have agreed to continue negotiating an appropriate scope for a reciprocal sales data exchange.

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**B. Expert Disclosures**

With respect to Masimo RFP 116, Apple maintains that the appropriate scope of reciprocal expert discovery—in terms of what is disclosed and when—should be governed by Fed. R. Civ. P. 26(b)(4)(C). We await your response.

**C. Temporal Limitations**

As you previously observed, Apple proposed that document discovery on Masimo’s antitrust claims reach back two years before the filing of the complaint (i.e., to December 12, 2020) with the exception of certain specified topics that Apple agreed to search back to January 1, 2020. Your July 8, 2023, letter proposes that the relevant time period for seven of your RFPs (64-65, 77-79, and 81-82) reach back four years before the filing of the action. We are confused why you would apply this date range to those requests, and suggest we continue discussing a reciprocal date range for antitrust and false advertising discovery during our scheduled meet-and-confer on July 12, 2023.

**D. Politan-Related Documents**

Masimo’s request for discovery into communications between Apple and Politan is an improper use of discovery in this case to serve Masimo’s management’s interest in an ongoing dispute against Politan. Further, the meet-and-confer revealed that Masimo has no valid grounds to believe there were any such communications. Without suggesting that any such documents existed, Apple offered in response to Interrogatory No. 16 a compromise that it would search custodial ESI. We continue to think that compromise is reasonable.

Masimo, however, has since put the Politan litigation squarely at issue in this case, claiming that the litigation itself, and the costs incurred as a result, were somehow caused by Apple’s assertion of the *Walker Process*-challenged patents. This assertion has forced Apple to serve on Masimo discovery relating to that litigation. *See* RFPs 127-128, 213-218. Accordingly, if Masimo agrees to search for and produce documents responsive to those requests, Apple will agree to undertake a reasonably diligent search for any documents or communications responsive to RFP 118. We can discuss this compromise further during our July 12, 2023 meet-and-confer.

**E. Reasonably Diligent Email Search**

Both parties must undertake a reasonably diligent search for responsive documents. For non-email, that includes searching central files and databases that are likely to contain responsive materials. It also involves collecting documents from individual custodians. With respect to email, however, Apple maintains that a reasonably diligent search is a review of email pulled based on the parties’ custodian and search term negotiations. The parties have agreed to 20 email custodians

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July 12, 2023  
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and 20 search strings. It is unduly burdensome to also require custodians to search through their own emails for responsive materials.

**F. Clarification On Parties' Agreements to Produce**

We confirm that where Apple set forth a category of documents that it would produce in response to an RFP, it intends to produce all documents falling within that category that it identifies based on a reasonably diligent search. It will not “filter out” any responsive documents within those categories that Apple deems irrelevant. To the extent Apple learns that a category of documents implicates an unduly burdensome scope of irrelevant materials, we will raise that issue with Masimo. We likewise understand that where Masimo agrees to produce non-privileged responsive documents, it intends to produce all documents falling within the full scope of the request that it locates after a reasonably diligent search, and Masimo too will not “filter out” any materials it deems irrelevant or otherwise narrow the scope of the production.

**G. Vagueness Objections**

With respect to Masimo RFPs 53 (documents related to interchangeability) and 57 (documents relating to Apple Watch’s position in the marketplace), Apple objected on vagueness grounds and offered a more defined scope. With respect to Apple RFP 74, Masimo claims that it will not search for documents “referring to any factors impacting or potentially impacting actual or forecasted sales volume, revenue, and/or profits of any Masimo Watch Product,” even after we clarified that Apple is seeking documents that specifically discuss things as potentially impacting the demand for or price of the Masimo Watch Products. We suggest that, rather than burden Judge Hall with these disputes, both parties undertake a good faith search for documents responsive to these issues, including by running proposed search terms that may return such documents.

Best regards,

*/s/ Mark A. Ford*

# EXHIBIT F

**From:** [Jared Bunker](#)  
**To:** [Jordan Malz](#)  
**Cc:** [Jared Bunker](#)  
**Subject:** [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation  
**Date:** Wednesday, July 26, 2023 11:34:09 AM

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Jordan

Further regarding the email requests, we did some preliminary searching on Term Nos. 3, 6, 9-12, and 18 and have identified other issues.

- Term No. 6: “watch” is returning too many false positives (“watch” as a verb and not a noun)
- Term No. 9: This search is returning nearly 300K hits (and we still need to run on a few more custodians, so the total number is higher) that are nearly all related to irrelevant products; the hits that relate to the watch also include STK and were covered by other searches
- Term No. 10: The following terms are returning too many false positives: google, monitor\*, series, share (as a verb and not as a noun), watch (as a verb and not as a noun), smart\*
- Term No. 11:
  - The following terms are returning too many false positives: share (as a verb and not as a noun), stock (referring to inventory and not to the equity), change
  - MASI is also returning many false positives because, for example, each press release and many articles mention MASI and have nothing to do with the MASI stock
- Term No. 12: our search tools cannot search for a term with a wildcard at the front and the back of a term or numbers – it keeps timing out and crashing

Please let me know when you can discuss the email search requests.

Sincerely,  
Jared

**Jared Bunker**  
Partner  
949-721-2957 Direct  
**Knobbe Martens**

---

**From:** Jordan Malz <JMalz@desmaraisllp.com>  
**Sent:** Sunday, July 23, 2023 6:39 PM  
**To:** Jared Bunker <Jared.Bunker@knobbe.com>

**Subject:** Re: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Thanks Jared, I've relayed your comments to the relevant folks on my team and will be looking into this tomorrow.

Jordan

Jordan N. Malz  
Desmarais LLP  
230 Park Avenue  
New York, NY 10169  
(212) 351-5497

---

**From:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>  
**Sent:** Saturday, July 22, 2023 11:08 AM  
**To:** Jordan Malz <[JMalz@desmaraisllp.com](mailto:JMalz@desmaraisllp.com)>  
**Cc:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>  
**Subject:** [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

**\*\*EXTERNAL EMAIL\*\* This email originated from outside the company. Do not click on any link unless you recognize the sender and have confidence the content is safe.**

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Jordan,

If you think an informal call would be helpful, please let me know your availability on Monday.

To help make the call more productive, here are my thoughts on Apple's revised list:

- We are probably okay with Term Nos. 3, 6, 9-12, and 18 and could start doing preliminary searches on them.
- Term No. 1
  - The time frame seems very unreasonable.
  - Messrs. Al-Ali, Kiani, Diab, Olsen, and Smith are on a lot of patents that have nothing to do with our case, so "al-ali," "alali," "kiani," "diab," "Olsen," "smith" seem unreasonable. Plus, Messrs. Kiani and Al-Ali are custodians, so their names are not limiting for their custodial emails.
- Term No. 2
  - The time frame seems very unreasonable.
- Term No. 4
  - The time frame seems very unreasonable.



- Mr. Kiani is a custodian, so “joe” and “kiani” are not limiting for his custodial emails.
- Term No. 5
  - “freedom” appears in both the primary and secondary terms and would not be limiting.
- Term No. 7
  - Mr. Kiani is a custodian, so “joe” and “kiani” are not limiting for his custodial emails.
- Term No. 8
  - Messrs. Kiani and Al-Ali are custodians, so “al-ali,” “alali,” and “kiani” are not limiting for their custodial emails.
- Term Nos. 13-17
  - These are non-starters. They don’t seem to have any reasonable focus toward our case.

Sincerely,  
Jared

**Jared Bunker**  
Partner  
949-721-2957 Direct  
**Knobbe Martens**

---

**From:** Jordan Malz <[JMalz@desmaraisllp.com](mailto:JMalz@desmaraisllp.com)>  
**Sent:** Friday, July 21, 2023 2:55 PM  
**To:** Jared Bunker <[Jared.Bunker@knobbe.com](mailto:Jared.Bunker@knobbe.com)>  
**Cc:** Jack Phillips <[JCP@pmhdelaw.com](mailto:JCP@pmhdelaw.com)>; Knobbe.MasimoDE <[Knobbe.MasimoDE@knobbe.com](mailto:Knobbe.MasimoDE@knobbe.com)>; Palapura, Bindu A. <[bpalapura@potteranderson.com](mailto:bpalapura@potteranderson.com)>; Greenfield, Leon <[Leon.Greenfield@wilmerhale.com](mailto:Leon.Greenfield@wilmerhale.com)>; Milici, Jennifer <[Jennifer.Milici@wilmerhale.com](mailto:Jennifer.Milici@wilmerhale.com)>; Megan C. Haney <[mch@pmhdelaw.com](mailto:mch@pmhdelaw.com)>; Vote, Dominic <[Dominic.Vote@wilmerhale.com](mailto:Dominic.Vote@wilmerhale.com)>; Ford, Mark <[Mark.Ford@wilmerhale.com](mailto:Mark.Ford@wilmerhale.com)>; Apple Masimo Service <[AppleMasimoService@desmaraisllp.com](mailto:AppleMasimoService@desmaraisllp.com)>; Moore, David E. <[dmoore@potteranderson.com](mailto:dmoore@potteranderson.com)>  
**Subject:** RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Jared,

Attached are Apple’s revised e-mail requests. Apple’s revised e-mail requests reflect compromises in an effort to reach a consensual resolution regarding these matters. Apple reserves the right to revert back to its July 13 e-mail requests should the parties not be able to reach a consensual resolution.

On our July 19 meet-and-confer, you stated that you would investigate whether Stephen Jensen (1)

was ever a Senior Vice President or General Counsel for Masimo and (2) ever had a Masimo, Cercacor, or Sound United e-mail address. You also stated that Mr. Jensen is not currently a member of Cercacor's board and that, to the extent Mr. Jensen's biography on the Knobbe Martens website indicates otherwise, that the website is inaccurate. Please kindly provide an update and confirmations regarding these matters.

Finally, I would be happy to have informal calls with you at your convenience if there is anything you would like to discuss prior to a follow-up meet-and-confer. I very much would like to narrow any remaining issues as much as possible, and a few informal back-and-forths might help facilitate that outcome.

Best,  
Jordan

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# EXHIBIT G

